

## § 120.1900

documents at such times, in such forms, and accompanied by such reporting data, as required by SBA, the SBA Office of the Inspector General, or other authorized government personnel upon request or upon a request by their duly authorized representatives to ensure compliance with the requirements of this Subpart and to evaluate the impact of the SISMBD Loan Program. SBA or other authorized government personnel and their duly authorized representatives, shall have full and free access to SISMBD offices and facilities and all books, documents, records, and financial statements relating to the use of SISMBD Loan proceeds during normal business hours and may copy such documents as they deem appropriate.

(c) *Retention of records.* A recipient of an SISMBD Loan shall comply with all SBA mandated record retention requirements.

(d) *Review.* (1) At least annually, SBA will review the SBA Secondary Market activity of an SISMBD Loan recipient.

(2) A loan recipient shall submit a report of SBA Secondary Market activity, SISMBD Loan usage and updated financial statements within 45 days after the end of each calendar quarter, or within some other period after the end of each calendar quarter as may be agreed to in the Loan Agreements with information requested by SBA.

(3) A recipient shall submit a report within 60 days after the end of each

Federal fiscal year, or by such alternative deadline as may be agreed to in the Loan Agreements or as required by the Recovery Act on: information on the number of Guaranteed Portions it purchased from SBA Lenders; information describing the manner in which SISMBD Loan proceeds were used. SBA will use such information to verify that loan proceeds were used in a manner consistent with the Loan Agreements, the Recovery Act and these regulations; certification that an SISMBD continues to meet the eligibility requirements described in Section 120.1820 of this Subpart; and its most recent audited financial statements prepared by an independent certified public accountant. Such statements shall cover the operations of the recipient's most recently completed fiscal year.

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ent's most recently completed fiscal year.

(4) SBA may make reports described in paragraph (d)(2) and (d)(3) of this section available for public inspection.

(e) *Reporting requirements.* SISMBD Loan recipients will have reporting requirements related to section 1512 of the Recovery Act. SBA will provide additional separate guidance on the Recovery Act reporting requirements.

### § 120.1900 When does the Secondary Market Lending Authority Program end?

The last date on which a loan under this program can be approved is February 16, 2011, unless Congress extends the SISMBD Loan Program. All loan applications must be received at SBA no later than January 31, 2011. Loans must be paid in full by no later than February 16, 2013.

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AUTHORITY: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

EFFECTIVE DATE NOTE: At 77 FR 76224, Dec. 27, 2012, the authority citation to part 121 was revised, effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 15 U.S.C. 632, 634(b)(6), 638, 662, and 694a(9).

SOURCE: 61 FR 3286, Jan. 31, 1996, unless otherwise noted.

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EDITORIAL NOTE: Nomenclature changes to part 121 appear at 72 FR 50039 and 50040, Aug. 30, 2007.

### Subpart A—Size Eligibility Provisions and Standards

#### PROVISIONS OF GENERAL APPLICABILITY

#### § 121.101 What are SBA size standards?

(a) SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).

(b) NAICS is described in the North American Industry Classification Manual—United States, which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; by calling 1(800) 553-6847 or 1(703) 605-6000; or via the Internet at <http://www.ntis.gov/products/naics.aspx>. The manual includes definitions for each industry, tables showing relationships between 1997 NAICS and 1987 SICs, and a comprehensive index. NAICS assigns codes to all economic activity within twenty broad sectors. Section 121.201 provides a full table of small business size standards matched to the U.S. NAICS industry codes. A full table matching a size standard with each NAICS Industry or U.S. Industry code is also published annually by SBA in the FEDERAL REGISTER.

[65 FR 30840, May 15, 2000, as amended at 67 FR 52602, Aug. 13, 2002; 74 FR 46313, Sept. 9, 2009]

#### § 121.102 How does SBA establish size standards?

(a) SBA considers economic characteristics comprising the structure of an industry, including degree of competition, average firm size, start-up costs and entry barriers, and distribution of firms by size. It also considers technological changes, competition from other industries, growth trends, historical activity within an industry, unique factors occurring in the industry which may distinguish small firms from other firms, and the objectives of its programs and the impact on those

programs of different size standard levels.

(b) As part of its review of a size standard, SBA will investigate if any concern at or below a particular standard would be dominant in the industry. SBA will take into consideration market share of a concern and other appropriate factors which may allow a concern to exercise a major controlling influence on a national basis in which a number of business concerns are engaged. Size standards seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.

(c) As part of its review of size standards, SBA's Office of Size Standards will examine the impact of inflation on monetary-based size standards (e.g., receipts, net income, assets) at least once every five years and submit a report to the Administrator or designee. If SBA finds that inflation has significantly eroded the value of the monetary-based size standards, it will issue a proposed rule to increase size standards.

(d) Please address any requests to change existing size standards or establish new ones for emerging industries to the Division Chief, Office of Size Standards, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 3045, Jan. 23, 2002]

#### § 121.103 How does SBA determine affiliation?

(a) *General Principles of Affiliation.* (1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.

(3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent

a quorum or otherwise block action by the board of directors or shareholders.

(4) Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.

(5) In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(6) In determining the concern's size, SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(b) *Exceptions to affiliation coverage.*

(1) Business concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, are not considered affiliates of such investment companies or development companies.

(2)(i) Business concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs) organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs) authorized by 42 U.S.C. 9805, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered affiliates of such entities.

(ii) Business concerns owned and controlled by Indian Tribes, ANCs, NHOs, CDCs, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management. In addition, affiliation will not be found based upon the performance of common administrative services, such as bookkeeping and payroll, so long as adequate payment is provided for those services. Affiliation may be found for other reasons.

(3) Business concerns which are part of an SBA approved pool of concerns for a joint program of research and development or for defense production as authorized by the Small Business Act

are not affiliates of one another because of the pool.

(4) Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses or which enter into a co-employer arrangement with a Professional Employer Organization (PEO) are not affiliated with the leasing company or PEO solely on the basis of a leasing agreement.

(5) For financial, management or technical assistance under the Small Business Investment Act of 1958, as amended, (an applicant is not affiliated with the investors listed in paragraphs (b)(5) (i) through (vi) of this section.

(i) Venture capital operating companies, as defined in the U.S. Department of Labor regulations found at 29 CFR 2510.3–101(d);

(ii) Employee benefit or pension plans established and maintained by the Federal government or any state, or their political subdivisions, or any agency or instrumentality thereof, for the benefit of employees;

(iii) Employee benefit or pension plans within the meaning of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, *et seq.*);

(iv) Charitable trusts, foundations, endowments, or similar organizations exempt from Federal income taxation under section 501(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 501(c));

(v) Investment companies registered under the Investment Company Act of 1940, as amended (1940 Act) (15 U.S.C. 80a-1, *et seq.*); and

(vi) Investment companies, as defined under the 1940 Act, which are not registered under the 1940 Act because they are beneficially owned by less than 100 persons, if the company's sales literature or organizational documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises.

(6) An 8(a) BD Participant that has an SBA-approved mentor/protégé agreement is not affiliated with a mentor firm solely because the protégé firm receives assistance from the mentor under the agreement. Similarly, a protégé firm is not affiliated with its

mentor solely because the protégé firm receives assistance from the mentor under a Federal Mentor-Protégé program where an exception to affiliation is specifically authorized by statute or by SBA under the procedures set forth in § 121.903. Affiliation may be found in either case for other reasons.

(7) The member shareholders of a small agricultural cooperative, as defined in the Agricultural Marketing Act (12 U.S.C. 1141j), are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

(c) *Affiliation based on stock ownership.* (1) A person (including any individual, concern or other entity) that owns, or has the power to control, 50 percent or more of a concern's voting stock, or a block of voting stock which is large compared to other outstanding blocks of voting stock, controls or has the power to control the concern.

(2) If two or more persons (including any individual, concern or other entity) each owns, controls, or has the power to control less than 50 percent of a concern's voting stock, and such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, SBA presumes that each such person controls or has the power to control the concern whose size is at issue. This presumption may be rebutted by a showing that such control or power to control does not in fact exist.

(3) If a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the concern's Board of Directors and CEO or President will be deemed to have the power to control the concern in the absence of evidence to the contrary.

(d) *Affiliation arising under stock options, convertible securities, and agreements to merge.* (1) In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(2) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered “agreements in principle” and are thus not given present effect.

(3) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(4) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals’, concerns’ or other entities’ ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors, managing members, or partners who control the board of directors and/or management of one concern also control the board of directors or management of one or more other concerns.

(f) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(g) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern’s officers, di-

rectors, principal stockholders, managing members, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A “key employee” is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(h) *Affiliation based on joint ventures.* A joint venture is an association of individuals and/or concerns with interests in any degree or proportion consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. This means that a specific joint venture entity generally may not be awarded more than three contracts over a two year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for all purposes. Once a joint venture receives one contract, SBA will determine compliance with the three awards in two years rule for future awards as of the date of initial offer including price. As such, an individual joint venture may be awarded more than three contracts without SBA finding general affiliation between the joint venture partners where the joint venture had received two or fewer contracts as of the date it submitted one or more additional offers which thereafter result in one or more additional contract awards. The same two (or more) entities may create additional joint ventures, and each new joint venture entity may be awarded up to three contracts in accordance with this section. At some point, however, such a longstanding inter-relationship or contractual dependence between the same joint venture partners will lead to a finding of general affiliation between and among them. For

purposes of this provision and in order to facilitate tracking of the number of contract awards made to a joint venture, a joint venture must be in writing and must do business under its own name, and it may (but need not) be in the form of a separate legal entity, and if it is a separate legal entity it may (but need not) be populated (*i.e.*, have its own separate employees). SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(4) of this section.

*Example 1 to paragraph (h) introductory text.* Joint Venture AB has received two contracts. On April 2, Joint Venture AB submits an offer for Solicitation 1. On June 6, Joint Venture AB submits an offer for Solicitation 2. On July 13, Joint Venture AB submits an offer for Solicitation 3. In September, Joint Venture AB is found to be the apparent successful offeror for all three solicitations. Even though the award of the three contracts would give Joint Venture AB a total of five contract awards, it could receive those awards without causing general affiliation between its joint venture partners because Joint Venture AB had not yet received three contract awards as of the dates of the offers for each of three solicitations at issue.

*Example 2 to paragraph (h) introductory text.* Joint Venture XY receives a contract on December 19, year 1. It may receive two additional contracts through December 19, year 3. On August 6, year 2, XY receives a second contract. It receives no other contract awards through December 19, year 3 and has submitted no additional offers prior to December 19, year 3. Because two years have passed since the date of the first contract award, after December 19, year 3, XY cannot receive an additional contract award. The individual parties to XY must form a new joint venture if they want to seek and be awarded additional contracts as a joint venture.

*Example 3 to paragraph (h) introductory text.* Joint Venture XY receives a contract on December 19, year 1. On May 22, year 2, XY submits an offer for Solicitation 1. On June 10, year 2, XY submits an offer for Solicitation 2. On June 19, year 2, XY receives a second contract responding to Solicitation 1. XY is not awarded a contract responding to Solicitation 2. On December 15, year 3, XY submits an offer for Solicitation 3. In January, XY is found to be the apparent successful offeror for Solicitation 3. XY is eligible for the contract award because compliance with the three awards in two years rule is determined as of the date of the initial offer including price, XY submitted its offer prior to Decem-

ber 19, year 3, and XY had not received three contract awards prior to its offer on December 15.

(1) Parties to a joint venture are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture.

(2) Except as provided in paragraph (h)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.

(3) *Exception to affiliation for certain joint ventures.* (i) A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (h) of this section so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(A) The procurement qualifies as a “bundled” requirement, at any dollar value, within the meaning of § 125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a “bundled” requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(1) For a procurement having a receipts based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(2) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds \$10 million.

(ii) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation under paragraph (h) of this section so long as the requirements of § 124.513(b)(1) of this chapter are met.

(iii) Two firms approved by SBA to be a mentor and protégé under § 124.520 of these regulations may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not

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reached the dollar limit set forth in § 124.519 of these regulations. If the procurement is to be awarded through the 8(a) BD program, SBA must approve the joint venture pursuant to § 124.513. If the procurement is to be awarded other than through the 8(a) BD program (e.g., small business set aside, HUBZone set aside), SBA need not approve the joint venture prior to award, but if the size status of the joint venture is protested, the provisions of §§ 124.513(c) and (d) will apply. This means that the joint venture must meet the requirements of §§ 124.513(c) and (d) in order to receive the exception to affiliation authorized by this paragraph. In either case, after contract performance is complete, the 8(a) partner to the joint venture must submit a report to its servicing SBA district office explaining how the applicable performance of work requirements were met for the contract.

(4) A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract, or of an order under a multiple award schedule contract, or a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

(5) For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts, and in its total number of employees its proportionate share of joint venture employees.

(i) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement relating

to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

[61 FR 3286, Jan. 31, 1996, as amended at 62 FR 26381, May 14, 1997; 63 FR 35738, June 30, 1998; 64 FR 57370, Oct. 25, 1999; 65 FR 30840, May 15, 2000; 65 FR 35812, June 6, 2000; 65 FR 45833, July 26, 2000; 69 FR 29201, May 21, 2004; 70 FR 51248, Aug. 30, 2005; 76 FR 8251, Feb. 11, 2011]

EFFECTIVE DATE NOTE: At 77 FR 76224, Dec. 27, 2012, § 121.103 was amended by adding a new paragraph (a)(7) and a new paragraph (b)(8), effective Jan. 28, 2013. For the convenience of the user, the added text is set forth as follows:

### § 121.103 How does SBA determine affiliation?

(a) \* \* \*

(7) For SBA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, the bases for affiliation are set forth in § 121.702.

(b) \* \* \*

(8) These exceptions to affiliation and any others set forth in § 121.702 apply for purposes of SBA's SBIR and STTR programs.

\* \* \* \* \*

### § 121.104 How does SBA calculate annual receipts?

(a) *Receipts* means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes



collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.

(1) The Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern. SBA will not use tax returns or amendments filed with the IRS after the initiation of a size determination.

(2) When a concern has not filed a Federal income tax return with the IRS for a fiscal year which must be included in the period of measurement, SBA will calculate the concern's annual receipts for that year using any other available information, such as the concern's regular books of account, audited financial statements, or information contained in an affidavit by a person with personal knowledge of the facts.

(b) *Completed fiscal year* means a taxable year including any short year. "Taxable year" and "short year" have the meanings attributed to them by the IRS.

(c) *Period of measurement.* (1) Annual receipts of a concern that has been in business for three or more completed fiscal years means the total receipts of the concern over its most recently completed three fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52.

(d) *Annual receipts of affiliates.* (1) The average annual receipts size of a business concern with affiliates is calculated by adding the average annual receipts of the business concern with the average annual receipts of each affiliate.

(2) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status includes the receipts of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(3) If the business concern or an affiliate has been in business for a period of less than three years, the receipts for the fiscal year with less than a 12 month period are annualized in accordance with paragraph (c)(2) of this section. Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this may result in using a different period of measurement to calculate an affiliate's annual receipts.

(4) The annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

(e) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 48604, Aug. 9, 2000; 69 FR 29203, May 21, 2004]

**§ 121.105 How does SBA define “business concern or concern”?**

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

(2) A small agricultural cooperative is an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C.A. 1141j) whose size does not exceed the size standard established by SBA for other similar agricultural small business concerns. A small agricultural cooperative’s member shareholders are not considered to be affiliates of the cooperative by virtue of their membership in the cooperative. However, a business concern or cooperative that does not qualify as small under this part may not be a member of a small agricultural cooperative.

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

(c) A firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. In such a case, the annual receipts and employees of the predecessor will be taken into account in determining size.

[61 FR 3286, Jan. 31, 1996, as amended at 70 FR 51248, Aug. 30, 2005]

**§ 121.106 How does SBA calculate number of employees?**

(a) In determining a concern’s number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the cir-

cumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) Where the size standard is number of employees, the method for determining a concern’s size includes the following principles:

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

(2) Part-time and temporary employees are counted the same as full-time employees.

(3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(4)(i) The average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the business concern with the average number of employees of each affiliate. If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29203, May 21, 2004]

## § 121.107

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### § 121.107 How does SBA determine a concern’s “primary industry”?

In determining the primary industry in which a concern or a concern combined with its affiliates is engaged, SBA considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.

### § 121.108 What are the penalties for misrepresentation of size status?

In addition to other laws which may be applicable, section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs. Sec-

tion 16(a) of the Act also provides, in part, for criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way the actions of the Agency.

#### SIZE STANDARDS USED TO DEFINE SMALL BUSINESS CONCERNS

### § 121.201 What size standards has SBA identified by North American Industry Classification System codes?

The size standards described in this section apply to all SBA programs unless otherwise specified in this part. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

#### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Sector 11—Agriculture, Forestry, Fishing and Hunting</b>			
<b>Subsector 111—Crop Production</b>			
111110 .....	Soybean Farming .....	\$0.75	.....
111120 .....	Oilseed (except Soybean) Farming .....	\$0.75	.....
111130 .....	Dry Pea and Bean Farming .....	\$0.75	.....
111140 .....	Wheat Farming .....	\$0.75	.....
111150 .....	Corn Farming .....	\$0.75	.....
111160 .....	Rice Farming .....	\$0.75	.....
111191 .....	Oilseed and Grain Combination Farming .....	\$0.75	.....
111199 .....	All Other Grain Farming .....	\$0.75	.....
111211 .....	Potato Farming .....	\$0.75	.....
111219 .....	Other Vegetable (except Potato) and Melon Farming .....	\$0.75	.....
111310 .....	Orange Groves .....	\$0.75	.....
111320 .....	Citrus (except Orange) Groves .....	\$0.75	.....
111331 .....	Apple Orchards .....	\$0.75	.....
111332 .....	Grape Vineyards .....	\$0.75	.....
111333 .....	Strawberry Farming .....	\$0.75	.....
111334 .....	Berry (except Strawberry) Farming .....	\$0.75	.....
111335 .....	Tree Nut Farming .....	\$0.75	.....
111336 .....	Fruit and Tree Nut Combination Farming .....	\$0.75	.....
111339 .....	Other Noncitrus Fruit Farming .....	\$0.75	.....
111411 .....	Mushroom Production .....	\$0.75	.....
111419 .....	Other Food Crops Grown Under Cover .....	\$0.75	.....
111421 .....	Nursery and Tree Production .....	\$0.75	.....
111422 .....	Floriculture Production .....	\$0.75	.....
111910 .....	Tobacco Farming .....	\$0.75	.....
111920 .....	Cotton Farming .....	\$0.75	.....
111930 .....	Sugarcane Farming .....	\$0.75	.....
111940 .....	Hay Farming .....	\$0.75	.....
111991 .....	Sugar Beet Farming .....	\$0.75	.....
111992 .....	Peanut Farming .....	\$0.75	.....
111998 .....	All Other Miscellaneous Crop Farming .....	\$0.75	.....
<b>Subsector 112—Animal Production and Aquaculture</b>			
112111 .....	Beef Cattle Ranching and Farming .....	\$0.75	.....
112112 .....	Cattle Feedlots .....	\$2.00	.....

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
112120 .....	Dairy Cattle and Milk Production .....	\$0.75	.....
112210 .....	Hog and Pig Farming .....	\$0.75	.....
112310 .....	Chicken Egg Production .....	\$12.5	.....
112320 .....	Broilers and Other Meat Type Chicken Production .....	\$0.75	.....
112330 .....	Turkey Production .....	\$0.75	.....
112340 .....	Poultry Hatcheries .....	\$0.75	.....
112390 .....	Other Poultry Production .....	\$0.75	.....
112410 .....	Sheep Farming .....	\$0.75	.....
112420 .....	Goat Farming .....	\$0.75	.....
112511 .....	Finfish Farming and Fish Hatcheries .....	\$0.75	.....
112512 .....	Shellfish Farming .....	\$0.75	.....
112519 .....	Other Aquaculture .....	\$0.75	.....
112910 .....	Apiculture .....	\$0.75	.....
112920 .....	Horse and Other Equine Production .....	\$0.75	.....
112930 .....	Fur-Bearing Animal and Rabbit Production .....	\$0.75	.....
112990 .....	All Other Animal Production .....	\$0.75	.....
<b>Subsector 113—Forestry and Logging</b>			
113110 .....	Timber Tract Operations .....	\$7.0	.....
113210 .....	Forest Nurseries and Gathering of Forest Products .....	\$7.0	.....
113310 .....	Logging .....	.....	500
<b>Subsector 114—Fishing, Hunting and Trapping</b>			
114111 .....	Finfish Fishing .....	\$4.0	.....
114112 .....	Shellfish Fishing .....	\$4.0	.....
114119 .....	Other Marine Fishing .....	\$4.0	.....
114210 .....	Hunting and Trapping .....	\$4.0	.....
<b>Subsector 115—Support Activities for Agriculture and Forestry</b>			
115111 .....	Cotton Ginning .....	\$7.0	.....
115112 .....	Soil Preparation, Planting, and Cultivating .....	\$7.0	.....
115113 .....	Crop Harvesting, Primarily by Machine .....	\$7.0	.....
115114 .....	Postharvest Crop Activities (except Cotton Ginning) .....	\$7.0	.....
115115 .....	Farm Labor Contractors and Crew Leaders .....	\$7.0	.....
115116 .....	Farm Management Services .....	\$7.0	.....
115210 .....	Support Activities for Animal Production .....	\$7.0	.....
115310 .....	Support Activities for Forestry .....	\$7.0	.....
Except, .....	Forest Fire Suppression <sup>17</sup> .....	<sup>17</sup> \$17.5	.....
Except, .....	Fuels Management Services <sup>17</sup> .....	<sup>17</sup> \$17.5	.....
<b>Sector 21—Mining, Quarrying, and Oil and Gas Extraction</b>			
<b>Subsector 211—Oil and Gas Extraction</b>			
211111 .....	Crude Petroleum and Natural Gas Extraction .....	.....	500
211112 .....	Natural Gas Liquid Extraction .....	.....	500
<b>Subsector 212—Mining (except Oil and Gas)</b>			
212111 .....	Bituminous Coal and Lignite Surface Mining .....	.....	500
212112 .....	Bituminous Coal Underground Mining .....	.....	500
212113 .....	Anthracite Mining .....	.....	500
212210 .....	Iron Ore Mining .....	.....	500
212221 .....	Gold Ore Mining .....	.....	500
212222 .....	Silver Ore Mining .....	.....	500
212231 .....	Lead Ore and Zinc Ore Mining .....	.....	500
212234 .....	Copper Ore and Nickel Ore Mining .....	.....	500
212291 .....	Uranium-Radium-Vanadium Ore Mining .....	.....	500
212299 .....	All Other Metal Ore Mining .....	.....	500
212311 .....	Dimension Stone Mining and Quarrying .....	.....	500
212312 .....	Crushed and Broken Limestone Mining and Quarrying .....	.....	500
212313 .....	Crushed and Broken Granite Mining and Quarrying .....	.....	500
212319 .....	Other Crushed and Broken Stone Mining and Quarrying .....	.....	500
212321 .....	Construction Sand and Gravel Mining .....	.....	500
212322 .....	Industrial Sand Mining .....	.....	500
212324 .....	Kaolin and Ball Clay Mining .....	.....	500
212325 .....	Clay and Ceramic and Refractory Minerals Mining .....	.....	500
212391 .....	Potash, Soda, and Borate Mineral Mining .....	.....	500

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
212392 .....	Phosphate Rock Mining .....	.....	500
212393 .....	Other Chemical and Fertilizer Mineral Mining .....	.....	500
212399 .....	All Other Nonmetallic Mineral Mining .....	.....	500
<b>Subsector 213—Support Activities for Mining</b>			
213111 .....	Drilling Oil and Gas Wells .....	.....	500
213112 .....	Support Activities for Oil and Gas Operations .....	\$7.0	.....
213113 .....	Support Activities for Coal Mining .....	\$7.0	.....
213114 .....	Support Activities for Metal Mining .....	\$7.0	.....
213115 .....	Support Activities for Nonmetallic Minerals (except Fuels) .....	\$7.0	.....
<b>Sector 22—Utilities</b>			
<b>Subsector 221—Utilities</b>			
221111 .....	Hydroelectric Power Generation .....	See footnote 1	.....
221112 .....	Fossil Fuel Electric Power Generation .....	See footnote 1	.....
221113 .....	Nuclear Electric Power Generation .....	See footnote 1	.....
221114 .....	Solar Electric Power Generation .....	(see footnote 1)	.....
221115 .....	Wind Electric Power Generation .....	(see footnote 1)	.....
221116 .....	Geothermal Electric Power Generation .....	(see footnote 1)	.....
221117 .....	Biomass Electric Power Generation .....	(see footnote 1)	.....
221118 .....	Other Electric Power Generation .....	(see footnote 1)	.....
221121 .....	Electric Bulk Power Transmission and Control .....	See footnote 1	.....
221122 .....	Electric Power Distribution .....	See footnote 1	.....
221210 .....	Natural Gas Distribution .....	.....	500
221310 .....	Water Supply and Irrigation Systems .....	\$7.0	.....
221320 .....	Sewage Treatment Facilities .....	\$7.0	.....
221330 .....	Steam and Air-Conditioning Supply .....	\$12.5	.....
<b>Sector 23—Construction</b>			
<b>Subsector 236—Construction of Buildings</b>			
236115 .....	New Single-Family Housing Construction (except For-Sale Builders) .....	\$33.5	.....
236116 .....	New Multifamily Housing Construction (except For-Sale Builders) .....	\$33.5	.....
236117 .....	New Housing For-Sale Builders .....	\$33.5	.....
236118 .....	Residential Remodelers .....	\$33.5	.....
236210 .....	Industrial Building Construction .....	\$33.5	.....
236220 .....	Commercial and Institutional Building Construction .....	\$33.5	.....
<b>Subsector 237—Heavy and Civil Engineering Construction</b>			
237110 .....	Water and Sewer Line and Related Structures Construction .....	\$33.5	.....
237120 .....	Oil and Gas Pipeline and Related Structures Construction .....	\$33.5	.....
237130 .....	Power and Communication Line and Related Structures Construction .....	\$33.5	.....
237210 .....	Land Subdivision .....	\$7.0	.....
237310 .....	Highway, Street, and Bridge Construction .....	\$33.5	.....
237990 .....	Other Heavy and Civil Engineering Construction .....	\$33.5	.....
Except, .....	Dredging and Surface Cleanup Activities <sup>2</sup> .....	<sup>2</sup> \$20.0	.....
<b>Subsector 238—Specialty Trade Contractors</b>			
238110 .....	Poured Concrete Foundation and Structure Contractors .....	\$14.0	.....
238120 .....	Structural Steel and Precast Concrete Contractors .....	\$14.0	.....
238130 .....	Framing Contractors .....	\$14.0	.....
238140 .....	Masonry Contractors .....	\$14.0	.....
238150 .....	Glass and Glazing Contractors .....	\$14.0	.....
238160 .....	Roofing Contractors .....	\$14.0	.....
238170 .....	Siding Contractors .....	\$14.0	.....
238190 .....	Other Foundation, Structure, and Building Exterior Contractors .....	\$14.0	.....
238210 .....	Electrical Contractors and Other Wiring Installation Contractors .....	\$14.0	.....
238220 .....	Plumbing, Heating, and Air-Conditioning Contractors .....	\$14.0	.....
238290 .....	Other Building Equipment Contractors .....	\$14.0	.....
238310 .....	Drywall and Insulation Contractors .....	\$14.0	.....

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
238320 .....	Painting and Wall Covering Contractors .....	\$14.0	.....
238330 .....	Flooring Contractors .....	\$14.0	.....
238340 .....	Tile and Terrazzo Contractors .....	\$14.0	.....
238350 .....	Finish Carpentry Contractors .....	\$14.0	.....
238390 .....	Other Building Finishing Contractors .....	\$14.0	.....
238910 .....	Site Preparation Contractors .....	\$14.0	.....
238990 .....	All Other Specialty Trade Contractors .....	\$14.0	.....
Except, .....	Building and Property Specialty Trade Services <sup>13</sup> .....	<sup>13</sup> \$14.0	.....
<b>Sectors 31–33—Manufacturing</b>			
<b>Subsector 311—Food Manufacturing</b>			
311111 .....	Dog and Cat Food Manufacturing .....	.....	500
311119 .....	Other Animal Food Manufacturing .....	.....	500
311211 .....	Flour Milling .....	.....	500
311212 .....	Rice Milling .....	.....	500
311213 .....	Malt Manufacturing .....	.....	500
311221 .....	Wet Corn Milling .....	.....	750
311224 .....	Soybean and Other Oilseed Processing .....	.....	1,000
311225 .....	Fats and Oils Refining and Blending .....	.....	1,000
311230 .....	Breakfast Cereal Manufacturing .....	.....	1,000
311313 .....	Beet Sugar Manufacturing .....	.....	750
311314 .....	Cane Sugar Manufacturing .....	.....	750
311340 .....	Nonchocolate Confectionery Manufacturing .....	.....	500
311351 .....	Chocolate and Confectionery Manufacturing from Cacao Beans .....	.....	500
311352 .....	Confectionery Manufacturing from Purchased Chocolate .....	.....	500
311411 .....	Frozen Fruit, Juice and Vegetable Manufacturing .....	.....	500
311412 .....	Frozen Specialty Food Manufacturing .....	.....	500
311421 .....	Fruit and Vegetable Canning <sup>3</sup> .....	.....	<sup>3</sup> 500
311422 .....	Specialty Canning .....	.....	1,000
311423 .....	Dried and Dehydrated Food Manufacturing .....	.....	500
311511 .....	Fluid Milk Manufacturing .....	.....	500
311512 .....	Creamery Butter Manufacturing .....	.....	500
311513 .....	Cheese Manufacturing .....	.....	500
311514 .....	Dry, Condensed, and Evaporated Dairy Product Manufacturing .....	.....	500
311520 .....	Ice Cream and Frozen Dessert Manufacturing .....	.....	500
311611 .....	Animal (except Poultry) Slaughtering .....	.....	500
311612 .....	Meat Processed from Carcasses .....	.....	500
311613 .....	Rendering and Meat Byproduct Processing .....	.....	500
311615 .....	Poultry Processing .....	.....	500
311710 .....	Seafood Product Preparation and Packaging .....	.....	500
311811 .....	Retail Bakeries .....	.....	500
311812 .....	Commercial Bakeries .....	.....	500
311813 .....	Frozen Cakes, Pies, and Other Pastries Manufacturing .....	.....	500
311821 .....	Cookie and Cracker Manufacturing .....	.....	750
311824 .....	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour .....	.....	500
311830 .....	Tortilla Manufacturing .....	.....	500
311911 .....	Roasted Nuts and Peanut Butter Manufacturing .....	.....	500
311919 .....	Other Snack Food Manufacturing .....	.....	500
311920 .....	Coffee and Tea Manufacturing .....	.....	500
311930 .....	Flavoring Syrup and Concentrate Manufacturing .....	.....	500
311941 .....	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing .....	.....	500
311942 .....	Spice and Extract Manufacturing .....	.....	500
311991 .....	Perishable Prepared Food Manufacturing .....	.....	500
311999 .....	All Other Miscellaneous Food Manufacturing .....	.....	500
<b>Subsector 312—Beverage and Tobacco Product Manufacturing</b>			
312111 .....	Soft Drink Manufacturing .....	.....	500
312112 .....	Bottled Water Manufacturing .....	.....	500
312113 .....	Ice Manufacturing .....	.....	500
312120 .....	Breweries .....	.....	500
312130 .....	Wineries .....	.....	500
312140 .....	Distilleries .....	.....	750
312230 .....	Tobacco Manufacturing .....	.....	1,000
<b>Subsector 313—Textile Mills</b>			
313110 .....	Fiber, Yarn, and Thread Mills .....	.....	500

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
313210 .....	Broadwoven Fabric Mills .....	.....	1,000
313220 .....	Narrow Fabric Mills and Schiffli Machine Embroidery .....	.....	500
313230 .....	Nonwoven Fabric Mills .....	.....	500
313240 .....	Knit Fabric Mills .....	.....	500
313310 .....	Textile and Fabric Finishing Mills .....	.....	1,000
313320 .....	Fabric Coating Mills .....	.....	1,000
<b>Subsector 314—Textile Product Mills</b>			
314110 .....	Carpet and Rug Mills .....	.....	500
314120 .....	Curtain and Linen Mills .....	.....	500
314910 .....	Textile Bag and Canvas Mills .....	.....	500
314994 .....	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills .....	.....	1,000
314999 .....	All Other Miscellaneous Textile Product Mills .....	.....	500
<b>Subsector 315—Apparel Manufacturing</b>			
315110 .....	Hosiery and Sock Mills .....	.....	500
315190 .....	Other Apparel Knitting Mills .....	.....	500
315192 .....	Underwear and Nightwear Knitting Mills .....	.....	500
315210 .....	Cut and Sew Apparel Contractors .....	.....	500
315220 .....	Men's and Boys' Cut and Sew Apparel Manufacturing .....	.....	500
315240 .....	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing ....	.....	500
315280 .....	Other Cut and Sew Apparel Manufacturing .....	.....	500
315990 .....	Apparel Accessories and Other Apparel Manufacturing .....	.....	500
<b>Subsector 316—Leather and Allied Product Manufacturing</b>			
316110 .....	Leather and Hide Tanning and Finishing .....	.....	500
316210 .....	Footwear Manufacturing .....	.....	1,000
316992 .....	Women's Handbag and Purse Manufacturing .....	.....	500
316998 .....	All Other Leather Good and Allied Product Manufacturing .....	.....	500
<b>Subsector 321—Wood Product Manufacturing</b>			
321113 .....	Sawmills .....	.....	500
321114 .....	Wood Preservation .....	.....	500
321211 .....	Hardwood Veneer and Plywood Manufacturing .....	.....	500
321212 .....	Softwood Veneer and Plywood Manufacturing .....	.....	500
321213 .....	Engineered Wood Member (except Truss) Manufacturing .....	.....	500
321214 .....	Truss Manufacturing .....	.....	500
321219 .....	Reconstituted Wood Product Manufacturing .....	.....	500
321911 .....	Wood Window and Door Manufacturing .....	.....	500
321912 .....	Cut Stock, Resawing Lumber, and Planing .....	.....	500
321918 .....	Other Millwork (including Flooring) .....	.....	500
321920 .....	Wood Container and Pallet Manufacturing .....	.....	500
321991 .....	Manufactured Home (Mobile Home) Manufacturing .....	.....	500
321992 .....	Prefabricated Wood Building Manufacturing .....	.....	500
321999 .....	All Other Miscellaneous Wood Product Manufacturing .....	.....	500
<b>Subsector 322—Paper Manufacturing</b>			
322110 .....	Pulp Mills .....	.....	750
322121 .....	Paper (except Newsprint) Mills .....	.....	750
322122 .....	Newsprint Mills .....	.....	750
322130 .....	Paperboard Mills .....	.....	750
322211 .....	Corrugated and Solid Fiber Box Manufacturing .....	.....	500
322212 .....	Folding Paperboard Box Manufacturing .....	.....	750
322219 .....	Other Paperboard Container Manufacturing .....	.....	750
322220 .....	Paper Bag and Coated and Treated Paper Manufacturing .....	.....	500
322230 .....	Stationery Product Manufacturing .....	.....	500
322291 .....	Sanitary Paper Product Manufacturing .....	.....	500
322299 .....	All Other Converted Paper Product Manufacturing .....	.....	500
<b>Subsector 323—Printing and Related Support Activities</b>			
323111 .....	Commercial Printing (except Screen and Books) .....	.....	500
323113 .....	Commercial Screen Printing .....	.....	500
323117 .....	Books Printing .....	.....	500
323120 .....	Support Activities for Printing .....	.....	500

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## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Subsector 324—Petroleum and Coal Products Manufacturing</b>			
324110 .....	Petroleum Refineries <sup>4</sup> .....	.....	4 1,500
324121 .....	Asphalt Paving Mixture and Block Manufacturing .....	.....	500
324122 .....	Asphalt Shingle and Coating Materials Manufacturing .....	.....	750
324191 .....	Petroleum Lubricating Oil and Grease Manufacturing .....	.....	500
324199 .....	All Other Petroleum and Coal Products Manufacturing .....	.....	500
<b>Subsector 325—Chemical Manufacturing</b>			
325110 .....	Petrochemical Manufacturing .....	.....	1,000
325120 .....	Industrial Gas Manufacturing .....	.....	1,000
325130 .....	Synthetic Dye and Pigment Manufacturing .....	.....	1,000
325180 .....	Other Basic Inorganic Chemical Manufacturing .....	.....	1,000
325193 .....	Ethyl Alcohol Manufacturing .....	.....	1,000
325194 .....	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.	.....	750
325199 .....	All Other Basic Organic Chemical Manufacturing .....	.....	1,000
325211 .....	Plastics Material and Resin Manufacturing .....	.....	750
325212 .....	Synthetic Rubber Manufacturing .....	.....	1,000
325220 .....	Artificial and Synthetic Fibers and Filaments Manufacturing .....	.....	1,000
325311 .....	Nitrogenous Fertilizer Manufacturing .....	.....	1,000
325312 .....	Phosphatic Fertilizer Manufacturing .....	.....	500
325314 .....	Fertilizer (Mixing Only) Manufacturing .....	.....	500
325320 .....	Pesticide and Other Agricultural Chemical Manufacturing .....	.....	500
325411 .....	Medicinal and Botanical Manufacturing .....	.....	750
325412 .....	Pharmaceutical Preparation Manufacturing .....	.....	750
325413 .....	In-Vitro Diagnostic Substance Manufacturing .....	.....	500
325414 .....	Biological Product (except Diagnostic) Manufacturing .....	.....	500
325510 .....	Paint and Coating Manufacturing .....	.....	500
325520 .....	Adhesive Manufacturing .....	.....	500
325611 .....	Soap and Other Detergent Manufacturing .....	.....	750
325612 .....	Polish and Other Sanitation Good Manufacturing .....	.....	500
325613 .....	Surface Active Agent Manufacturing .....	.....	500
325620 .....	Toilet Preparation Manufacturing .....	.....	500
325910 .....	Printing Ink Manufacturing .....	.....	500
325920 .....	Explosives Manufacturing .....	.....	750
325991 .....	Custom Compounding of Purchased Resins .....	.....	500
325992 .....	Photographic Film, Paper, Plate and Chemical Manufacturing .....	.....	500
325998 .....	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	.....	500
<b>Subsector 326—Plastics and Rubber Products Manufacturing</b>			
326111 .....	Plastics Bag and Pouch Manufacturing .....	.....	500
326112 .....	Plastics Packaging Film and Sheet(including Laminated) Manufacturing.	.....	500
326113 .....	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing.	.....	500
326121 .....	Unlaminated Plastics Profile Shape Manufacturing .....	.....	500
326122 .....	Plastics Pipe and Pipe Fitting Manufacturing .....	.....	500
326130 .....	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing.	.....	500
326140 .....	Polystyrene Foam Product Manufacturing .....	.....	500
326150 .....	Urethane and Other Foam Product (except Polystyrene) Manufacturing.	.....	500
326160 .....	Plastics Bottle Manufacturing .....	.....	500
326191 .....	Plastics Plumbing Fixture Manufacturing .....	.....	500
326199 .....	All Other Plastics Product Manufacturing .....	.....	750
326211 .....	Tire Manufacturing (except Retreading) <sup>5</sup> .....	.....	5 1,000
326212 .....	Tire Retreading .....	.....	500
326220 .....	Rubber and Plastics Hoses and Belting Manufacturing .....	.....	500
326291 .....	Rubber Product Manufacturing for Mechanical Use .....	.....	500
326299 .....	All Other Rubber Product Manufacturing .....	.....	500
<b>Subsector 327—Nonmetallic Mineral Product Manufacturing</b>			
327110 .....	Pottery, Ceramics, and Plumbing Fixture Manufacturing .....	.....	750
327120 .....	Clay Building Material and Refractories Manufacturing .....	.....	750
327211 .....	Flat Glass Manufacturing .....	.....	1,000
327212 .....	Other Pressed and Blown Glass and Glassware Manufacturing .....	.....	750



## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
327213 .....	Glass Container Manufacturing .....	.....	750
327215 .....	Glass Product Manufacturing Made of Purchased Glass .....	.....	500
327310 .....	Cement Manufacturing .....	.....	750
327320 .....	Ready-Mix Concrete Manufacturing .....	.....	500
327331 .....	Concrete Block and Brick Manufacturing .....	.....	500
327332 .....	Concrete Pipe Manufacturing .....	.....	500
327390 .....	Other Concrete Product Manufacturing .....	.....	500
327410 .....	Lime Manufacturing .....	.....	500
327420 .....	Gypsum Product Manufacturing .....	.....	1,000
327910 .....	Abrasive Product Manufacturing .....	.....	500
327991 .....	Cut Stone and Stone Product Manufacturing .....	.....	500
327992 .....	Ground or Treated Mineral and Earth Manufacturing .....	.....	500
327993 .....	Mineral Wool Manufacturing .....	.....	750
327999 .....	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing .....	.....	500
<b>Subsector 331—Primary Metal Manufacturing</b>			
331110 .....	Iron and Steel Mills and Ferroalloy Manufacturing .....	.....	1,000
331210 .....	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel ..	.....	1,000
331221 .....	Rolled Steel Shape Manufacturing .....	.....	1,000
331222 .....	Steel Wire Drawing .....	.....	1,000
331313 .....	Alumina Refining and Primary Aluminum Production .....	.....	1,000
331314 .....	Secondary Smelting and Alloying of Aluminum .....	.....	750
331315 .....	Aluminum Sheet, Plate and Foil Manufacturing .....	.....	750
331318 .....	Other Aluminum Rolling, Drawing, and Extruding .....	.....	750
331410 .....	Nonferrous Metal (except Aluminum) Smelting and Refining .....	.....	1,000
331420 .....	Copper Rolling, Drawing, Extruding, and Alloying .....	.....	1,000
331491 .....	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding.	.....	750
331492 .....	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (ex- cept Copper and Aluminum).	.....	750
331511 .....	Iron Foundries .....	.....	500
331512 .....	Steel Investment Foundries .....	.....	500
331513 .....	Steel Foundries (except Investment) .....	.....	500
331523 .....	Nonferrous Metal Die-Casting Foundries .....	.....	500
331524 .....	Aluminum Foundries (except Die-Casting) .....	.....	500
331529 .....	Other Nonferrous Metal Foundries (except Die-Casting) .....	.....	500
<b>Subsector 332—Fabricated Metal Product Manufacturing</b>			
332111 .....	Iron and Steel Forging .....	.....	500
332112 .....	Nonferrous Forging .....	.....	500
332114 .....	Custom Roll Forming .....	.....	500
332117 .....	Powder Metallurgy Part Manufacturing .....	.....	500
332119 .....	Metal Crown, Closure, and Other Metal Stamping (except Auto- motive).	.....	500
332215 .....	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Pre- cious) Manufacturing.	.....	500
332216 .....	Saw Blade and Handtool Manufacturing .....	.....	500
332311 .....	Prefabricated Metal Building and Component Manufacturing .....	.....	500
332312 .....	Fabricated Structural Metal Manufacturing .....	.....	500
332313 .....	Plate Work Manufacturing .....	.....	500
332321 .....	Metal Window and Door Manufacturing .....	.....	500
332322 .....	Sheet Metal Work Manufacturing .....	.....	500
332323 .....	Ornamental and Architectural Metal Work Manufacturing .....	.....	500
332410 .....	Power Boiler and Heat Exchanger Manufacturing .....	.....	500
332420 .....	Metal Tank (Heavy Gauge) Manufacturing .....	.....	500
332431 .....	Metal Can Manufacturing .....	.....	1,000
332439 .....	Other Metal Container Manufacturing .....	.....	500
332510 .....	Hardware Manufacturing .....	.....	500
332613 .....	Spring Manufacturing .....	.....	500
332618 .....	Other Fabricated Wire Product Manufacturing .....	.....	500
332710 .....	Machine Shops .....	.....	500
332721 .....	Precision Turned Product Manufacturing .....	.....	500
332722 .....	Bolt, Nut, Screw, Rivet and Washer Manufacturing .....	.....	500
332811 .....	Metal Heat Treating .....	.....	750
332812 .....	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.	.....	500
332813 .....	Electroplating, Plating, Polishing, Anodizing and Coloring .....	.....	500
332911 .....	Industrial Valve Manufacturing .....	.....	500
332912 .....	Fluid Power Valve and Hose Fitting Manufacturing .....	.....	500

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
332913 .....	Plumbing Fixture Fitting and Trim Manufacturing .....	.....	500
332919 .....	Other Metal Valve and Pipe Fitting Manufacturing .....	.....	500
332991 .....	Ball and Roller Bearing Manufacturing .....	.....	750
332992 .....	Small Arms Ammunition Manufacturing .....	.....	1,000
332993 .....	Ammunition (except Small Arms) Manufacturing .....	.....	1,500
332994 .....	Small Arms, Ordnance, and Ordnance Accessories Manufacturing ....	.....	1,000
332996 .....	Fabricated Pipe and Pipe Fitting Manufacturing .....	.....	500
332999 .....	All Other Miscellaneous Fabricated Metal Product Manufacturing .....	.....	750
<b>Subsector 333—Machinery Manufacturing<sup>6</sup></b>			
333111 .....	Farm Machinery and Equipment Manufacturing .....	.....	500
333112 .....	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.	.....	500
333120 .....	Construction Machinery Manufacturing .....	.....	750
333131 .....	Mining Machinery and Equipment Manufacturing .....	.....	500
333132 .....	Oil and Gas Field Machinery and Equipment Manufacturing .....	.....	500
333241 .....	Food Product Machinery Manufacturing .....	.....	500
333242 .....	Semiconductor Machinery Manufacturing .....	.....	500
333243 .....	Sawmill, Woodworking, and Paper Machinery Manufacturing .....	.....	500
333244 .....	Printing Machinery and Equipment Manufacturing .....	.....	500
333249 .....	Other Industrial Machinery Manufacturing .....	.....	500
333314 .....	Optical Instrument and Lens Manufacturing .....	.....	500
333316 .....	Photographic and Photocopying Equipment Manufacturing .....	.....	1,000
333318 .....	Other Commercial and Service Industry Machinery Manufacturing ....	.....	1,000
333413 .....	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.	.....	500
333414 .....	Heating Equipment (except Warm Air Furnaces) Manufacturing .....	.....	500
333415 .....	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	.....	750
333511 .....	Industrial Mold Manufacturing .....	.....	500
333514 .....	Special Die and Tool, Die Set, Jig and Fixture Manufacturing .....	.....	500
333515 .....	Cutting Tool and Machine Tool Accessory Manufacturing .....	.....	500
333517 .....	Machine Tool Manufacturing .....	.....	500
333519 .....	Rolling Mill and Other Metalworking Machinery Manufacturing .....	.....	500
333611 .....	Turbine and Turbine Generator Set Unit Manufacturing .....	.....	1,000
333612 .....	Speed Changer, Industrial High- Speed Drive and Gear Manufacturing.	.....	500
333613 .....	Mechanical Power Transmission Equipment Manufacturing .....	.....	500
333618 .....	Other Engine Equipment Manufacturing .....	.....	1,000
333911 .....	Pump and Pumping Equipment Manufacturing .....	.....	500
333912 .....	Air and Gas Compressor Manufacturing .....	.....	500
333913 .....	Measuring and Dispensing Pump Manufacturing .....	.....	500
333921 .....	Elevator and Moving Stairway Manufacturing .....	.....	500
333922 .....	Conveyor and Conveying Equipment Manufacturing .....	.....	500
333923 .....	Overhead Traveling Crane, Hoist and Monorail System Manufacturing.	.....	500
333924 .....	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing.	.....	750
333991 .....	Power-Driven Hand Tool Manufacturing .....	.....	500
333992 .....	Welding and Soldering Equipment Manufacturing .....	.....	500
333993 .....	Packaging Machinery Manufacturing .....	.....	500
333994 .....	Industrial Process Furnace and Oven Manufacturing .....	.....	500
333995 .....	Fluid Power Cylinder and Actuator Manufacturing .....	.....	500
333996 .....	Fluid Power Pump and Motor Manufacturing .....	.....	500
333997 .....	Scale and Balance Manufacturing .....	.....	500
333999 .....	All Other Miscellaneous General Purpose Machinery Manufacturing ..	.....	500
<b>Subsector 334—Computer and Electronic Product Manufacturing<sup>6</sup></b>			
334111 .....	Electronic Computer Manufacturing .....	.....	1,000
334112 .....	Computer Storage Device Manufacturing .....	.....	1,000
334118 .....	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	.....	1,000
334210 .....	Telephone Apparatus Manufacturing .....	.....	1,000
334220 .....	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	.....	750
334290 .....	Other Communications Equipment Manufacturing .....	.....	750
334310 .....	Audio and Video Equipment Manufacturing .....	.....	750
334412 .....	Bare Printed Circuit Board Manufacturing .....	.....	500
334413 .....	Semiconductor and Related Device Manufacturing .....	.....	500

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
334416 .....	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.	.....	500
334417 .....	Electronic Connector Manufacturing .....	.....	500
334418 .....	Printed Circuit Assembly (Electronic Assembly) Manufacturing .....	.....	500
334419 .....	Other Electronic Component Manufacturing .....	.....	500
334510 .....	Electromedical and Electrotherapeutic Apparatus Manufacturing .....	.....	500
334511 .....	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	.....	750
334512 .....	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use.	.....	500
334513 .....	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.	.....	500
334514 .....	Totalizing Fluid Meter and Counting Device Manufacturing .....	.....	500
334515 .....	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals.	.....	500
334516 .....	Analytical Laboratory Instrument Manufacturing .....	.....	500
334517 .....	Irradiation Apparatus Manufacturing .....	.....	500
334519 .....	Other Measuring and Controlling Device Manufacturing .....	.....	500
334613 .....	Blank Magnetic and Optical Recording Media Manufacturing .....	.....	1,000
334614 .....	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing.	.....	750
<b>Subsector 335—Electrical Equipment, Appliance and Component Manufacturing<sup>6</sup></b>			
335110 .....	Electric Lamp Bulb and Part Manufacturing .....	.....	1,000
335121 .....	Residential Electric Lighting Fixture Manufacturing .....	.....	500
335122 .....	Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing.	.....	500
335129 .....	Other Lighting Equipment Manufacturing .....	.....	500
335210 .....	Small Electrical Appliance Manufacturing .....	.....	750
335221 .....	Household Cooking Appliance Manufacturing .....	.....	750
335222 .....	Household Refrigerator and Home Freezer Manufacturing .....	.....	1,000
335224 .....	Household Laundry Equipment Manufacturing .....	.....	1,000
335228 .....	Other Major Household Appliance Manufacturing .....	.....	500
335311 .....	Power, Distribution and Specialty Transformer Manufacturing .....	.....	750
335312 .....	Motor and Generator Manufacturing .....	.....	1,000
335313 .....	Switchgear and Switchboard Apparatus Manufacturing .....	.....	750
335314 .....	Relay and Industrial Control Manufacturing .....	.....	750
335911 .....	Storage Battery Manufacturing .....	.....	500
335912 .....	Primary Battery Manufacturing .....	.....	1,000
335921 .....	Fiber Optic Cable Manufacturing .....	.....	1,000
335929 .....	Other Communication and Energy Wire Manufacturing .....	.....	1,000
335931 .....	Current-Carrying Wiring Device Manufacturing .....	.....	500
335932 .....	Noncurrent-Carrying Wiring Device Manufacturing .....	.....	500
335991 .....	Carbon and Graphite Product Manufacturing .....	.....	750
335999 .....	All Other Miscellaneous Electrical Equipment and Component Manufacturing.	.....	500
<b>Subsector 336—Transportation Equipment Manufacturing<sup>6</sup></b>			
336111 .....	Automobile Manufacturing .....	.....	1,000
336112 .....	Light Truck and Utility Vehicle Manufacturing .....	.....	1,000
336120 .....	Heavy Duty Truck Manufacturing .....	.....	1,000
336211 .....	Motor Vehicle Body Manufacturing .....	.....	1,000
336212 .....	Truck Trailer Manufacturing .....	.....	500
336213 .....	Motor Home Manufacturing .....	.....	1,000
336214 .....	Travel Trailer and Camper Manufacturing .....	.....	500
336310 .....	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing .....	.....	750
336320 .....	Motor Vehicle Electrical and Electronic Equipment Manufacturing .....	.....	750
336330 .....	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing.	.....	750
336340 .....	Motor Vehicle Brake System Manufacturing .....	.....	750
336350 .....	Motor Vehicle Transmission and Power Train Parts Manufacturing .....	.....	750
336360 .....	Motor Vehicle Seating and Interior Trim Manufacturing .....	.....	500
336370 .....	Motor Vehicle Metal Stamping .....	.....	500
336390 .....	Other Motor Vehicle Parts Manufacturing .....	.....	750
336411 .....	Aircraft Manufacturing .....	.....	1,500
336412 .....	Aircraft Engine and Engine Parts Manufacturing .....	.....	1,000
336413 .....	Other Aircraft Part and Auxiliary Equipment Manufacturing <sup>7</sup> .....	.....	7 1,000
336414 .....	Guided Missile and Space Vehicle Manufacturing .....	.....	1,000

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
336415 .....	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing.	.....	1,000
336419 .....	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.	.....	1,000
336510 .....	Railroad Rolling Stock Manufacturing .....	.....	1,000
336611 .....	Ship Building and Repairing .....	.....	1,000
336612 .....	Boat Building .....	.....	500
336991 .....	Motorcycle, Bicycle and Parts Manufacturing .....	.....	500
336992 .....	Military Armored Vehicle, Tank and Tank Component Manufacturing .....	.....	1,000
336999 .....	All Other Transportation Equipment Manufacturing .....	.....	500

#### Subsector 337—Furniture and Related Product Manufacturing

337110 .....	Wood Kitchen Cabinet and Counter Top Manufacturing .....	.....	500
337121 .....	Upholstered Household Furniture Manufacturing .....	.....	500
337122 .....	Nonupholstered Wood Household Furniture Manufacturing .....	.....	500
337124 .....	Metal Household Furniture Manufacturing .....	.....	500
337125 .....	Household Furniture (except Wood and Metal) Manufacturing .....	.....	500
337127 .....	Institutional Furniture Manufacturing .....	.....	500
337211 .....	Wood Office Furniture Manufacturing .....	.....	500
337212 .....	Custom Architectural Woodwork and Millwork Manufacturing .....	.....	500
337214 .....	Office Furniture (Except Wood) Manufacturing .....	.....	500
337215 .....	Showcase, Partition, Shelving, and Locker Manufacturing .....	.....	500
337910 .....	Mattress Manufacturing .....	.....	500
337920 .....	Blind and Shade Manufacturing .....	.....	500

#### Subsector 339—Miscellaneous Manufacturing

339112 .....	Surgical and Medical Instrument Manufacturing .....	.....	500
339113 .....	Surgical Appliance and Supplies Manufacturing .....	.....	500
339114 .....	Dental Equipment and Supplies Manufacturing .....	.....	500
339115 .....	Ophthalmic Goods Manufacturing .....	.....	500
339116 .....	Dental Laboratories .....	.....	500
≤339910 .....	Jewelry and Silverware Manufacturing .....	.....	500
339920 .....	Sporting and Athletic Goods Manufacturing .....	.....	500
339930 .....	Doll, Toy, and Game Manufacturing .....	.....	500
339940 .....	Office Supplies (except Paper) Manufacturing .....	.....	500
339950 .....	Sign Manufacturing .....	.....	500
339991 .....	Gasket, Packing, and Sealing Device Manufacturing .....	.....	500
339992 .....	Musical Instrument Manufacturing .....	.....	500
339993 .....	Fastener, Button, Needle and Pin Manufacturing .....	.....	500
339994 .....	Broom, Brush and Mop Manufacturing .....	.....	500
339995 .....	Burial Casket Manufacturing .....	.....	500
339999 .....	All Other Miscellaneous Manufacturing .....	.....	500

#### Sector 42—Wholesale Trade

(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal Government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)

#### Subsector 423—Merchant Wholesalers, Durable Goods

423110 .....	Automobile and Other Motor Vehicle Merchant Wholesalers .....	.....	100
423120 .....	Motor Vehicle Supplies and New Parts Merchant Wholesalers .....	.....	100
423130 .....	Tire and Tube Merchant Wholesalers .....	.....	100
423140 .....	Motor Vehicle Parts (Used) Merchant Wholesalers .....	.....	100
423210 .....	Furniture Merchant Wholesalers .....	.....	100
423220 .....	Home Furnishing Merchant Wholesalers .....	.....	100
423310 .....	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers .....	.....	100
423320 .....	Brick, Stone, and Related Construction Material Merchant Wholesalers .....	.....	100
423330 .....	Roofing, Siding, and Insulation Material Merchant Wholesalers .....	.....	100
423390 .....	Other Construction Material Merchant Wholesalers .....	.....	100
423410 .....	Photographic Equipment and Supplies Merchant Wholesalers .....	.....	100
423420 .....	Office Equipment Merchant Wholesalers .....	.....	100
423430 .....	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers .....	.....	100
423440 .....	Other Commercial Equipment Merchant Wholesalers .....	.....	100

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
423450 .....	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers.	.....	100
423460 .....	Ophthalmic Goods Merchant Wholesalers .....	.....	100
423490 .....	Other Professional Equipment and Supplies Merchant Wholesalers ..	.....	100
423510 .....	Metal Service Centers and Other Metal Merchant Wholesalers .....	.....	100
423520 .....	Coal and Other Mineral and Ore Merchant Wholesalers .....	.....	100
423610 .....	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.	.....	100
423620 .....	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	.....	100
423690 .....	Other Electronic Parts and Equipment Merchant Wholesalers .....	.....	100
423710 .....	Hardware Merchant Wholesalers .....	.....	100
423720 .....	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.	.....	100
423730 .....	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.	.....	100
423740 .....	Refrigeration Equipment and Supplies Merchant Wholesalers .....	.....	100
423810 .....	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers.	.....	100
423820 .....	Farm and Garden Machinery and Equipment Merchant Wholesalers	.....	100
423830 .....	Industrial Machinery and Equipment Merchant Wholesalers .....	.....	100
423840 .....	Industrial Supplies Merchant Wholesalers .....	.....	100
423850 .....	Service Establishment Equipment and Supplies Merchant Wholesalers.	.....	100
423860 .....	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	.....	100
423910 .....	Sporting and Recreational Goods and Supplies Merchant Wholesalers.	.....	100
423920 .....	Toy and Hobby Goods and Supplies Merchant Wholesalers .....	.....	100
423930 .....	Recyclable Material Merchant Wholesalers .....	.....	100
423940 .....	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	.....	100
423990 .....	Other Miscellaneous Durable Goods Merchant Wholesalers .....	.....	100
<b>Subsector 424—Merchant Wholesalers, Nondurable Goods</b>			
424110 .....	Printing and Writing Paper Merchant Wholesalers .....	.....	100
424120 .....	Stationary and Office Supplies Merchant Wholesalers .....	.....	100
424130 .....	Industrial and Personal Service Paper Merchant Wholesalers .....	.....	100
424210 .....	Drugs and Druggists' Sundries Merchant Wholesalers .....	.....	100
424310 .....	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	.....	100
424320 .....	Men's and Boys' Clothing and Furnishings Merchant Wholesalers ....	.....	100
424330 .....	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	.....	100
424340 .....	Footwear Merchant Wholesalers .....	.....	100
424410 .....	General Line Grocery Merchant Wholesalers .....	.....	100
424420 .....	Packaged Frozen Food Merchant Wholesalers .....	.....	100
424430 .....	Dairy Product (except Dried or Canned) Merchant Wholesalers .....	.....	100
424440 .....	Poultry and Poultry Product Merchant Wholesalers .....	.....	100
424450 .....	Confectionery Merchant Wholesalers .....	.....	100
424460 .....	Fish and Seafood Merchant Wholesalers .....	.....	100
424470 .....	Meat and Meat Product Merchant Wholesalers .....	.....	100
424480 .....	Fresh Fruit and Vegetable Merchant Wholesalers .....	.....	100
424490 .....	Other Grocery and Related Products Merchant Wholesalers .....	.....	100
424510 .....	Grain and Field Bean Merchant Wholesalers .....	.....	100
424520 .....	Livestock Merchant Wholesalers .....	.....	100
424590 .....	Other Farm Product Raw Material Merchant Wholesalers .....	.....	100
424610 .....	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers.	.....	100
424690 .....	Other Chemical and Allied Products Merchant Wholesalers .....	.....	100
424710 .....	Petroleum Bulk Stations and Terminals .....	.....	100
424720 .....	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	.....	100
424810 .....	Beer and Ale Merchant Wholesalers .....	.....	100
424820 .....	Wine and Distilled Alcoholic Beverage Merchant Wholesalers .....	.....	100
424910 .....	Farm Supplies Merchant Wholesalers .....	.....	100
424920 .....	Book, Periodical, and Newspaper Merchant Wholesalers .....	.....	100
424930 .....	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	.....	100
424940 .....	Tobacco and Tobacco Product Merchant Wholesalers .....	.....	100
424950 .....	Paint, Varnish, and Supplies Merchant Wholesalers .....	.....	100

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
424990 .....	Other Miscellaneous Nondurable Goods Merchant Wholesalers .....	.....	100
<b>Subsector 425—Wholesale Electronic Markets and Agents and Brokers</b>			
425110 .....	Business to Business Electronic Markets .....	.....	100
425120 .....	Wholesale Trade Agents and Brokers .....	.....	100
<b>Sector 44—Retail Trade</b>			
(These NAICS codes shall not be used to classify Government acquisitions for supplies. They also shall not be used by Federal Government contractors when subcontracting for the acquisition for supplies. The applicable manufacturing NAICS code shall be used to classify acquisitions for supplies. A Wholesale Trade or Retail Trade business concern submitting an offer or a quote on a supply acquisition is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.)			
<b>Subsector 441—Motor Vehicle and Parts Dealers</b>			
441110 .....	New Car Dealers .....	.....	200
441120 .....	Used Car Dealers .....	\$23.0	.....
441210 .....	Recreational Vehicle Dealers .....	\$30.0	.....
441222 .....	Boat Dealers .....	30.0	.....
441228 .....	Motorcycle, ATV, and All Other Motor Vehicle Dealers .....	30.0	.....
441310 .....	Automotive Parts and Accessories Stores .....	14.0	.....
441320 .....	Tire Dealers .....	14.0	.....
<b>Subsector 442—Furniture and Home Furnishings Stores</b>			
442110 .....	Furniture Stores .....	19.0	.....
442210 .....	Floor Covering Stores .....	\$7.0	.....
442291 .....	Window Treatment Stores .....	\$7.0	.....
442299 .....	All Other Home Furnishings Stores .....	19.0	.....
<b>Subsector 443—Electronics and Appliance Stores</b>			
443141 .....	Household Appliance Stores .....	10.0	.....
443142 .....	Electronics Stores .....	30.0	.....
<b>Subsector 444—Building Material and Garden Equipment and Supplies Dealers</b>			
444110 .....	Home Centers .....	35.5	.....
444120 .....	Paint and Wallpaper Stores .....	25.5	.....
444130 .....	Hardware Stores .....	\$7.0	.....
444190 .....	Other Building Material Dealers .....	19.0	.....
444210 .....	Outdoor Power Equipment Stores .....	\$7.0	.....
444220 .....	Nursery and Garden Centers .....	10.0	.....
<b>Subsector 445—Food and Beverage Stores</b>			
445110 .....	Supermarkets and Other Grocery (except Convenience) Stores .....	30.0	.....
445120 .....	Convenience Stores .....	\$27.0	.....
445210 .....	Meat Markets .....	\$7.0	.....
445220 .....	Fish and Seafood Markets .....	\$7.0	.....
445230 .....	Fruit and Vegetable Markets .....	\$7.0	.....
445291 .....	Baked Goods Stores .....	\$7.0	.....
445292 .....	Confectionery and Nut Stores .....	\$7.0	.....
445299 .....	All Other Specialty Food Stores .....	\$7.0	.....
445310 .....	Beer, Wine and Liquor Stores .....	\$7.0	.....
<b>Subsector 446—Health and Personal Care Stores</b>			
446110 .....	Pharmacies and Drug Stores .....	25.5	.....
446120 .....	Cosmetics, Beauty Supplies and Perfume Stores .....	25.5	.....
446130 .....	Optical Goods Stores .....	19.0	.....
446191 .....	Food (Health) Supplement Stores .....	14.0	.....
446199 .....	All Other Health and Personal Care Stores .....	\$7.0	.....
<b>Subsector 447—Gasoline Stations</b>			
447110 .....	Gasoline Stations with Convenience Stores .....	\$27.0	.....
447190 .....	Other Gasoline Stations .....	14.0	.....

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Subsector 448—Clothing and Clothing Accessories Stores</b>			
448110 .....	Men's Clothing Stores .....	10.0	
448120 .....	Women's Clothing Stores .....	25.5	
448130 .....	Children's and Infants' Clothing Stores .....	30.0	
448140 .....	Family Clothing Stores .....	35.5	
448150 .....	Clothing Accessories Stores .....	14.0	
448190 .....	Other Clothing Stores .....	19.0	
448210 .....	Shoe Stores .....	25.5	
448310 .....	Jewelry Stores .....	14.0	
448320 .....	Luggage and Leather Goods Stores .....	25.5	
<b>Subsector 451—Sporting Good, Hobby, Book and Music Stores</b>			
451110 .....	Sporting Goods Stores .....	14.0	
451120 .....	Hobby, Toy and Game Stores .....	25.5	
451130 .....	Sewing, Needlework and Piece Goods Stores .....	25.5	
451140 .....	Musical Instrument and Supplies Stores .....	10.0	
451211 .....	Book Stores .....	25.5	
451212 .....	News Dealers and Newsstands .....	\$7.0	
<b>Subsector 452—General Merchandise Stores</b>			
452111 .....	Department Stores (except Discount Department Stores) .....	30.0	
452112 .....	Discount Department Stores .....	\$27.0	
452910 .....	Warehouse Clubs and Superstores .....	\$27.0	
452990 .....	All Other General Merchandise Stores .....	30.0	
<b>Subsector 453—Miscellaneous Store Retailers</b>			
453110 .....	Florists .....	\$7.0	
453210 .....	Office Supplies and Stationary Stores .....	30.0	
453220 .....	Gift, Novelty and Souvenir Stores .....	\$7.0	
453310 .....	Used Merchandise Stores .....	\$7.0	
453910 .....	Pet and Pet Supplies Stores .....	19.0	
453920 .....	Art Dealers .....	\$7.0	
453930 .....	Manufactured (Mobile) Home Dealers .....	14.0	
453991 .....	Tobacco Stores .....	\$7.0	
453998 .....	All Other Miscellaneous Store Retailers (except Tobacco Stores) .....	\$7.0	
<b>Subsector 454—Nonstore Retailers</b>			
454111 .....	Electronic Shopping .....	30.0	
454112 .....	Electronic Auctions .....	35.5	
454113 .....	Mail Order Houses .....	35.5	
454210 .....	Vending Machine Operators .....	10.0	
454310 .....	Fuel Dealers .....		50
454390 .....	Other Direct Selling Establishments .....	\$7.0	
<b>Sectors 48–49—Transportation and Warehousing</b>			
<b>Subsector 481—Air Transportation</b>			
481111 .....	Scheduled Passenger Air Transportation .....		1,500
481112 .....	Scheduled Freight Air Transportation .....		1,500
481211 .....	Nonscheduled Chartered Passenger Air Transportation .....		1,500
Except, .....	Offshore Marine Air Transportation Services .....	\$28.0	
481212 .....	Nonscheduled Chartered Freight Air Transportation .....		1,500
Except, .....	Offshore Marine Air Transportation Services .....	\$28.0	
481219 .....	Other Nonscheduled Air Transportation .....	\$14.0	
<b>Subsector 482—Rail Transportation</b>			
482111 .....	Line-Haul Railroads .....		1,500
482112 .....	Short Line Railroads .....		500
<b>Subsector 483—Water Transportation <sup>15</sup></b>			
483111 .....	Deep Sea Freight Transportation .....		500
483112 .....	Deep Sea Passenger Transportation .....		500
483113 .....	Coastal and Great Lakes Freight Transportation .....		500

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
483114 .....	Coastal and Great Lakes Passenger Transportation .....	.....	500
483211 .....	Inland Water Freight Transportation .....	.....	500
483212 .....	Inland Water Passenger Transportation .....	.....	500
<b>Subsector 484—Truck Transportation</b>			
484110 .....	General Freight Trucking, Local .....	\$25.5	.....
484121 .....	General Freight Trucking, Long-Distance, Truckload .....	\$25.5	.....
484122 .....	General Freight Trucking, Long-Distance, Less Than Truckload .....	\$25.5	.....
484210 .....	Used Household and Office Goods Moving .....	\$25.5	.....
484220 .....	Specialized Freight (except Used Goods) Trucking, Local .....	\$25.5	.....
484230 .....	Specialized Freight (except Used Goods) Trucking, Long-Distance ...	\$25.5	.....
<b>Subsector 485—Transit and Ground Passenger Transportation</b>			
485111 .....	Mixed Mode Transit Systems .....	14.0	.....
485112 .....	Commuter Rail Systems .....	14.0	.....
485113 .....	Bus and Other Motor Vehicle Transit Systems .....	14.0	.....
485119 .....	Other Urban Transit Systems .....	14.0	.....
485210 .....	Interurban and Rural Bus Transportation .....	14.0	.....
485310 .....	Taxi Service .....	14.0	.....
485320 .....	Limousine Service .....	14.0	.....
485410 .....	School and Employee Bus Transportation .....	14.0	.....
485510 .....	Charter Bus Industry .....	14.0	.....
485991 .....	Special Needs Transportation .....	14.0	.....
485999 .....	All Other Transit and Ground Passenger Transportation .....	14.0	.....
<b>Subsector 486—Pipeline Transportation</b>			
486110 .....	Pipeline Transportation of Crude Oil .....	.....	1,500
486210 .....	Pipeline Transportation of Natural Gas .....	25.5	.....
486910 .....	Pipeline Transportation of Refined Petroleum Products .....	.....	1,500
486990 .....	All Other Pipeline Transportation .....	\$34.5	.....
<b>Subsector 487—Scenic and Sightseeing Transportation</b>			
487110 .....	Scenic and Sightseeing Transportation, Land .....	\$7.0	.....
487210 .....	Scenic and Sightseeing Transportation, Water .....	\$7.0	.....
487990 .....	Scenic and Sightseeing Transportation, Other .....	\$7.0	.....
<b>Subsector 488—Support Activities for Transportation</b>			
488111 .....	Air Traffic Control .....	30.0	.....
488119 .....	Other Airport Operations .....	30.0	.....
488190 .....	Other Support Activities for Air Transportation .....	30.0	.....
488210 .....	Support Activities for Rail Transportation .....	14.0	.....
488310 .....	Port and Harbor Operations .....	35.5	.....
488320 .....	Marine Cargo Handling .....	35.5	.....
488330 .....	Navigational Services to Shipping .....	35.5	.....
488390 .....	Other Support Activities for Water Transportation .....	35.5	.....
488410 .....	Motor Vehicle Towing .....	\$7.0	.....
488490 .....	Other Support Activities for Road Transportation .....	\$7.0	.....
488510 .....	Freight Transportation Arrangement <sup>10</sup> .....	<sup>10</sup> 14.0	.....
Except, .....	Non-Vessel Owning Common Carriers and Household Goods For- warders.	\$25.5	.....
488991 .....	Packing and Crating .....	\$25.5	.....
488999 .....	All Other Support Activities for Transportation .....	\$7.0	.....
<b>Subsector 491—Postal Service</b>			
491110 .....	Postal Service .....	\$7.0	.....
<b>Subsector 492—Couriers and Messengers</b>			
492110 .....	Couriers and Express Delivery Services .....	.....	1,500
492210 .....	Local Messengers and Local Delivery .....	\$25.5	.....
<b>Subsector 493—Warehousing and Storage</b>			
493110 .....	General Warehousing and Storage .....	\$25.5	.....
493120 .....	Refrigerated Warehousing and Storage .....	\$25.5	.....



## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
493130 .....	Farm Product Warehousing and Storage .....	\$25.5	.....
493190 .....	Other Warehousing and Storage .....	\$25.5	.....
<b>Sector 51—Information</b>			
<b>Subsector 511—Publishing Industries (except Internet)</b>			
511110 .....	Newspaper Publishers .....	.....	500
511120 .....	Periodical Publishers .....	.....	500
511130 .....	Book Publishers .....	.....	500
511140 .....	Directory and Mailing List Publishers .....	.....	500
511191 .....	Greeting Card Publishers .....	.....	500
511199 .....	All Other Publishers .....	.....	500
511210 .....	Software Publishers .....	\$25.0	.....
<b>Subsector 512—Motion Picture and Sound Recording Industries</b>			
512110 .....	Motion Picture and Video Production .....	\$29.5	.....
512120 .....	Motion Picture and Video Distribution .....	\$29.5	.....
512131 .....	Motion Picture Theaters (except Drive-Ins) .....	\$7.0	.....
512132 .....	Drive-In Motion Picture Theaters .....	\$7.0	.....
512191 .....	Teleproduction and Other Postproduction Services .....	\$29.5	.....
512199 .....	Other Motion Picture and Video Industries .....	\$7.0	.....
512210 .....	Record Production .....	\$7.0	.....
512220 .....	Integrated Record Production/Distribution .....	.....	750
512230 .....	Music Publishers .....	.....	500
512240 .....	Sound Recording Studios .....	\$7.0	.....
512290 .....	Other Sound Recording Industries .....	\$7.0	.....
<b>Subsector 515—Broadcasting (except Internet)</b>			
515111 .....	Radio Networks .....	\$7.0	.....
515112 .....	Radio Stations .....	\$7.0	.....
515120 .....	Television Broadcasting .....	\$14.0	.....
515210 .....	Cable and Other Subscription Programming .....	\$15.0	.....
<b>Subsector 517—Telecommunications</b>			
517110 .....	Wired Telecommunications Carriers .....	.....	1,500
517210 .....	Wireless Telecommunications Carriers (except Satellite) .....	.....	1,500
517410 .....	Satellite Telecommunications .....	\$15.0	.....
517911 .....	Telecommunications Resellers .....	.....	1,500
517919 .....	All Other Telecommunications .....	\$25.0	.....
<b>Subsector 518—Data Processing, Hosting, and Related Services</b>			
518210 .....	Data Processing, Hosting, and Related Services .....	\$25.0	.....
<b>Subsector 519—Other Information Services</b>			
519110 .....	News Syndicates .....	\$7.0	.....
519120 .....	Libraries and Archives .....	\$7.0	.....
519130 .....	Internet Publishing and Broadcasting and Web Search Portals .....	.....	500
519190 .....	All Other Information Services .....	\$7.0	.....
<b>Sector 52—Finance and Insurance</b>			
<b>Subsector 522—Credit Intermediation and Related Activities</b>			
522110 .....	Commercial Banking <sup>a</sup> .....	<sup>a</sup> \$175 million in assets	.....
522120 .....	Savings Institutions <sup>a</sup> .....	<sup>a</sup> \$175 million in assets	.....
522130 .....	Credit Unions <sup>a</sup> .....	<sup>a</sup> \$175 million in assets	.....
522190 .....	Other Depository Credit Intermediation <sup>a</sup> .....	<sup>a</sup> \$175 million in assets	.....
522210 .....	Credit Card Issuing <sup>a</sup> .....	<sup>a</sup> \$175 million in assets	.....
522220 .....	Sales Financing .....	\$7.0	.....
522291 .....	Consumer Lending .....	\$7.0	.....

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
522292 .....	Real Estate Credit .....	\$7.0 .....	.....
522293 .....	International Trade Financing <sup>8</sup> .....	<sup>8</sup> \$175 million in assets .....	.....
522294 .....	Secondary Market Financing .....	\$7.0 .....	.....
522298 .....	All Other Non-Depository Credit Intermediation .....	\$7.0 .....	.....
522310 .....	Mortgage and Nonmortgage Loan Brokers .....	\$7.0 .....	.....
522320 .....	Financial Transactions Processing, Reserve, and Clearing House Activities .....	\$7.0 .....	.....
522390 .....	Other Activities Related to Credit Intermediation .....	\$7.0 .....	.....
<b>Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities</b>			
523110 .....	Investment Banking and Securities Dealing .....	\$7.0 .....	.....
523120 .....	Securities Brokerage .....	\$7.0 .....	.....
523130 .....	Commodity Contracts Dealing .....	\$7.0 .....	.....
523140 .....	Commodity Contracts Brokerage .....	\$7.0 .....	.....
523210 .....	Securities and Commodity Exchanges .....	\$7.0 .....	.....
523910 .....	Miscellaneous Intermediation .....	\$7.0 .....	.....
523920 .....	Portfolio Management .....	\$7.0 .....	.....
523930 .....	Investment Advice .....	\$7.0 .....	.....
523991 .....	Trust, Fiduciary and Custody Activities .....	\$7.0 .....	.....
523999 .....	Miscellaneous Financial Investment Activities .....	\$7.0 .....	.....
<b>Subsector 524—Insurance Carriers and Related Activities</b>			
524113 .....	Direct Life Insurance Carriers .....	\$7.0 .....	.....
524114 .....	Direct Health and Medical Insurance Carriers .....	\$7.0 .....	.....
524126 .....	Direct Property and Casualty Insurance Carriers .....	.....	1,500
524127 .....	Direct Title Insurance Carriers .....	\$7.0 .....	.....
524128 .....	Other Direct Insurance (except Life, Health and Medical) Carriers .....	\$7.0 .....	.....
524130 .....	Reinsurance Carriers .....	\$7.0 .....	.....
524210 .....	Insurance Agencies and Brokerages .....	\$7.0 .....	.....
524291 .....	Claims Adjusting .....	\$7.0 .....	.....
524292 .....	Third Party Administration of Insurance and Pension Funds .....	\$7.0 .....	.....
524298 .....	All Other Insurance Related Activities .....	\$7.0 .....	.....
<b>Subsector 525—Funds, Trusts and Other Financial Vehicles</b>			
525110 .....	Pension Funds .....	\$7.0 .....	.....
525120 .....	Health and Welfare Funds .....	\$7.0 .....	.....
525190 .....	Other Insurance Funds .....	\$7.0 .....	.....
525910 .....	Open-End Investment Funds .....	\$7.0 .....	.....
525920 .....	Trusts, Estates, and Agency Accounts .....	\$7.0 .....	.....
525930 .....	Real Estate Investment Trusts .....	\$7.0 .....	.....
525990 .....	Other Financial Vehicles .....	\$7.0 .....	.....
<b>Sector 53—Real Estate and Rental and Leasing</b>			
<b>Subsector 531—Real Estate</b>			
531110 .....	Lessors of Residential Buildings and Dwellings .....	\$25.5 .....	.....
531120 .....	Lessors of Nonresidential Buildings (except Miniwarehouses) .....	25.5 .....	.....
531130 .....	Lessors of Miniwarehouses and Self Storage Units .....	\$25.5 .....	.....
531190 .....	Lessors of Other Real Estate Property .....	25.5 .....	.....
Except, .....	Leasing of Building Space to Federal Government by Owners <sup>9</sup> .....	<sup>9</sup> 35.5 .....	.....
531210 .....	Offices of Real Estate Agents and Brokers <sup>10</sup> .....	<sup>10</sup> 7.0 .....	.....
531311 .....	Residential Property Managers .....	7.0 .....	.....
531312 .....	Nonresidential Property Managers .....	7.0 .....	.....
531320 .....	Offices of Real Estate Appraisers .....	7.0 .....	.....
531390 .....	Other Activities Related to Real Estate .....	7.0 .....	.....
<b>Subsector 532—Rental and Leasing Services</b>			
532111 .....	Passenger Car Rental .....	35.5 .....	.....
532112 .....	Passenger Car Leasing .....	35.5 .....	.....
532120 .....	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing .....	35.5 .....	.....
532210 .....	Consumer Electronics and Appliances Rental .....	35.5 .....	.....
532220 .....	Formal Wear and Costume Rental .....	19.0 .....	.....
532230 .....	Video Tape and Disc Rental .....	25.5 .....	.....
532291 .....	Home Health Equipment Rental .....	30.0 .....	.....

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
532292 .....	Recreational Goods Rental .....	\$7.0	.....
532299 .....	All Other Consumer Goods Rental .....	\$7.0	.....
532310 .....	General Rental Centers .....	\$7.0	.....
532411 .....	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing.	30.0	.....
532412 .....	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing.	30.0	.....
532420 .....	Office Machinery and Equipment Rental and Leasing .....	30.0	.....
532490 .....	Other Commercial and Industrial Machinery and Equipment Rental and Leasing.	30.0	.....
<b>Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)</b>			
533110 .....	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).	35.5	.....
<b>Sector 54—Professional, Scientific and Technical Services</b>			
<b>Subsector 541—Professional, Scientific and Technical Services</b>			
541110 .....	Offices of Lawyers .....	\$10.0	.....
541191 .....	Title Abstract and Settlement Offices .....	10.0	.....
541199 .....	All Other Legal Services .....	10.0	.....
541211 .....	Offices of Certified Public Accountants .....	19.0	.....
541213 .....	Tax Preparation Services .....	19.0	.....
541214 .....	Payroll Services .....	19.0	.....
541219 .....	Other Accounting Services .....	19.0	.....
541310 .....	Architectural Services .....	7.0	.....
541320 .....	Landscape Architectural Services .....	\$7.0	.....
541330 .....	Engineering Services .....	14.0	.....
Except, .....	Military and Aerospace Equipment and Military Weapons .....	35.5	.....
Except, .....	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	35.5	.....
Except, .....	Marine Engineering and Naval Architecture .....	35.5	.....
541340 .....	Drafting Services .....	\$7.0	.....
541350 .....	Building Inspection Services .....	\$7.0	.....
541360 .....	Geophysical Surveying and Mapping Services .....	14.0	.....
541370 .....	Surveying and Mapping (except Geophysical) Services .....	14.0	.....
541380 .....	Testing Laboratories .....	14.0	.....
541410 .....	Interior Design Services .....	\$7.0	.....
541420 .....	Industrial Design Services .....	\$7.0	.....
541430 .....	Graphic Design Services .....	\$7.0	.....
541490 .....	Other Specialized Design Services .....	\$7.0	.....
541511 .....	Custom Computer Programming Services .....	25.5	.....
541512 .....	Computer Systems Design Services .....	25.5	.....
541513 .....	Computer Facilities Management Services .....	25.5	.....
541519 .....	Other Computer Related Services .....	25.5	.....
Except, .....	Information Technology Value Added Resellers <sup>18</sup> .....	.....	<sup>18</sup> 150
541611 .....	Administrative Management and General Management Consulting Services.	14.0	.....
541612 .....	Human Resources Consulting Services .....	14.0	.....
541613 .....	Marketing Consulting Services .....	14.0	.....
541614 .....	Process, Physical Distribution and Logistics Consulting Services .....	14.0	.....
541618 .....	Other Management Consulting Services .....	14.0	.....
541620 .....	Environmental Consulting Services .....	14.0	.....
541690 .....	Other Scientific and Technical Consulting Services .....	14.0	.....
541711 .....	Research and Development in Biotechnology. <sup>11</sup> .....	.....	<sup>11</sup> 500
541712 .....	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology). <sup>11</sup> .....	.....	<sup>11</sup> 500
Except, .....	Aircraft .....	.....	1,500
Except, .....	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts ....	.....	1,000
Except, .....	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	.....	1,000
541720 .....	Research and Development in the Social Sciences and Humanities ..	19.0	.....
541810 .....	Advertising Agencies <sup>10</sup> .....	<sup>10</sup> 14.0	.....
541820 .....	Public Relations Agencies .....	14.0	.....
541830 .....	Media Buying Agencies .....	14.0	.....
541840 .....	Media Representatives .....	14.0	.....
541850 .....	Outdoor Advertising .....	14.0	.....
541860 .....	Direct Mail Advertising .....	14.0	.....
541870 .....	Advertising Material Distribution Services .....	14.0	.....

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
541890 .....	Other Services Related to Advertising .....	14.0	
541910 .....	Marketing Research and Public Opinion Polling .....	14.0	
541921 .....	Photography Studios, Portrait .....	\$7.0	
541922 .....	Commercial Photography .....	\$7.0	
541930 .....	Translation and Interpretation Services .....	\$7.0	
541940 .....	Veterinary Services .....	\$7.0	
541990 .....	All Other Professional, Scientific and Technical Services .....	\$14.0	
<b>Sector 55—Management of Companies and Enterprises</b>			
<b>Subsector 551—Management of Companies and Enterprises</b>			
551111 .....	Offices of Bank Holding Companies .....	\$7.0	
551112 .....	Offices of Other Holding Companies .....	\$7.0	
<b>Sector 56—Administrative and Support, Waste Management and Remediation Services</b>			
<b>Subsector 561—Administrative and Support Services</b>			
561110 .....	Office Administrative Services .....	\$7.0	
561210 .....	Facilities Support Services <sup>12</sup> .....	<sup>12</sup> \$35.5	
561311 .....	Employment Placement Agencies .....	\$7.0	
561312 .....	Executive Search Services .....	\$7.0	
561320 .....	Temporary Help Services .....	\$13.5	
561330 .....	Professional Employer Organizations .....	\$13.5	
561410 .....	Document Preparation Services .....	\$7.0	
561421 .....	Telephone Answering Services .....	\$7.0	
561422 .....	Telemarketing Bureaus and Other Contact Centers .....	\$7.0	
561431 .....	Private Mail Centers .....	\$7.0	
561439 .....	Other Business Service Centers (including Copy Shops) .....	\$7.0	
561440 .....	Collection Agencies .....	\$7.0	
561450 .....	Credit Bureaus .....	\$7.0	
561491 .....	Repossession Services .....	\$7.0	
561492 .....	Court Reporting and Stenotype Services .....	\$7.0	
561499 .....	All Other Business Support Services .....	\$7.0	
561510 .....	Travel Agencies <sup>10</sup> .....	<sup>10</sup> \$3.5	
561520 .....	Tour Operators <sup>10</sup> .....	<sup>10</sup> \$7.0	
561591 .....	Convention and Visitors Bureaus .....	\$7.0	
561599 .....	All Other Travel Arrangement and Reservation Services .....	\$7.0	
561611 .....	Investigation Services .....	\$12.5	
561612 .....	Security Guards and Patrol Services .....	\$18.5	
561613 .....	Armored Car Services .....	\$12.5	
561621 .....	Security Systems Services (except Locksmiths) .....	\$12.5	
561622 .....	Locksmiths .....	\$7.0	
561710 .....	Exterminating and Pest Control Services .....	\$7.0	
561720 .....	Janitorial Services .....	\$16.5	
561730 .....	Landscaping Services .....	\$7.0	
561740 .....	Carpet and Upholstery Cleaning Services .....	\$4.5	
561790 .....	Other Services to Buildings and Dwellings .....	\$7.0	
561910 .....	Packaging and Labeling Services .....	\$7.0	
561920 .....	Convention and Trade Show Organizers <sup>10</sup> .....	<sup>10</sup> \$7.0	
561990 .....	All Other Support Services .....	\$7.0	
<b>Subsector 562—Waste Management and Remediation Services</b>			
562111 .....	Solid Waste Collection .....	\$12.5	
562112 .....	Hazardous Waste Collection .....	\$12.5	
562119 .....	Other Waste Collection .....	\$12.5	
562211 .....	Hazardous Waste Treatment and Disposal .....	\$12.5	
562212 .....	Solid Waste Landfill .....	\$12.5	
562213 .....	Solid Waste Combustors and Incinerators .....	\$12.5	
562219 .....	Other Nonhazardous Waste Treatment and Disposal .....	\$12.5	
562910 .....	Remediation Services .....	\$14.0	
Except, .....	Environmental Remediation Services <sup>14</sup> .....		<sup>14</sup> 500
562920 .....	Materials Recovery Facilities .....	\$12.5	
562991 .....	Septic Tank and Related Services .....	\$7.0	
562998 .....	All Other Miscellaneous Waste Management Services .....	\$7.0	

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Sector 61—Educational Services</b>			
<b>Subsector 611—Educational Services</b>			
611110 .....	Elementary and Secondary Schools .....	10.0	
611210 .....	Junior Colleges .....	19.0	
611310 .....	Colleges, Universities and Professional Schools .....	25.5	
611410 .....	Business and Secretarial Schools .....	\$7.0	
611420 .....	Computer Training .....	10.0	
611430 .....	Professional and Management Development Training .....	10.0	
611511 .....	Cosmetology and Barber Schools .....	\$7.0	
611512 .....	Flight Training .....	\$25.5	
611513 .....	Apprenticeship Training .....	\$7.0	
611519 .....	Other Technical and Trade Schools .....	14.0	
611610 .....	Fine Arts Schools .....	\$7.0	
611620 .....	Sports and Recreation Instruction .....	\$7.0	
611630 .....	Language Schools .....	10.0	
611691 .....	Exam Preparation and Tutoring .....	\$7.0	
611692 .....	Automobile Driving Schools .....	\$7.0	
611699 .....	All Other Miscellaneous Schools and Instruction .....	10.0	
611710 .....	Educational Support Services .....	14.0	
<b>Sector 62—Health Care and Social Assistance</b>			
<b>Subsector 621—Ambulatory Health Care Services</b>			
621111 .....	Offices of Physicians (except Mental Health Specialists) .....	\$10.0	
621112 .....	Offices of Physicians, Mental Health Specialists .....	\$10.0	
621210 .....	Offices of Dentists .....	\$7.0	
621310 .....	Offices of Chiropractors .....	\$7.0	
621320 .....	Offices of Optometrists .....	\$7.0	
621330 .....	Offices of Mental Health Practitioners (except Physicians) .....	\$7.0	
621340 .....	Offices of Physical, Occupational and Speech Therapists and Audiologists .....	\$7.0	
621391 .....	Offices of Podiatrists .....	\$7.0	
621399 .....	Offices of All Other Miscellaneous Health Practitioners .....	\$7.0	
621410 .....	Family Planning Centers .....	\$10.0	
621420 .....	Outpatient Mental Health and Substance Abuse Centers .....	\$14.0	
621491 .....	HMO Medical Centers .....	30.0	
621492 .....	Kidney Dialysis Centers .....	35.5	
621493 .....	Freestanding Ambulatory Surgical and Emergency Centers .....	14.0	
621498 .....	All Other Outpatient Care Centers .....	19.0	
621511 .....	Medical Laboratories .....	30.0	
621512 .....	Diagnostic Imaging Centers .....	14.0	
621610 .....	Home Health Care Services .....	14.0	
621910 .....	Ambulance Services .....	14.0	
621991 .....	Blood and Organ Banks .....	30.0	
621999 .....	All Other Miscellaneous Ambulatory Health Care Services .....	14.0	
<b>Subsector 622—Hospitals</b>			
622110 .....	General Medical and Surgical Hospitals .....	35.5	
622210 .....	Psychiatric and Substance Abuse Hospitals .....	35.5	
622310 .....	Specialty (except Psychiatric and Substance Abuse) Hospitals .....	35.5	
<b>Subsector 623—Nursing and Residential Care Facilities</b>			
623110 .....	Nursing Care Facilities (Skilled Nursing Facilities) .....	25.5	
623210 .....	Residential Intellectual and Developmental Disability Facilities .....	14.0	
623220 .....	Residential Mental Health and Substance Abuse Facilities .....	14.0	
623311 .....	Continuing Care Retirement Communities .....	25.5	
623312 .....	Assisted Living Facilities for the Elderly .....	10.0	
623990 .....	Other Residential Care Facilities .....	10.0	
<b>Subsector 624—Social Assistance</b>			
624110 .....	Child and Youth Services .....	10.0	
624120 .....	Services for the Elderly and Persons with Disabilities .....	10.0	
624190 .....	Other Individual and Family Services .....	10.0	
624210 .....	Community Food Services .....	10.0	
624221 .....	Temporary Shelters .....	10.0	

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
624229 .....	Other Community Housing Services .....	14.0	
624230 .....	Emergency and Other Relief Services .....	30.0	
624310 .....	Vocational Rehabilitation Services .....	10.0	
624410 .....	Child Day Care Services .....	\$7.0	
<b>Sector 71—Arts, Entertainment and Recreation</b>			
<b>Subsector 711—Performing Arts, Spectator Sports and Related Industries</b>			
711110 .....	Theater Companies and Dinner Theaters .....	\$7.0	
711120 .....	Dance Companies .....	\$7.0	
711130 .....	Musical Groups and Artists .....	\$7.0	
711190 .....	Other Performing Arts Companies .....	\$7.0	
711211 .....	Sports Teams and Clubs .....	\$7.0	
711212 .....	Race Tracks .....	\$7.0	
711219 .....	Other Spectator Sports .....	\$7.0	
711310 .....	Promoters of Performing Arts, Sports and Similar Events with Facilities.	\$7.0	
711320 .....	Promoters of Performing Arts, Sports and Similar Events without Facilities.	\$7.0	
711410 .....	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures.	\$7.0	
711510 .....	Independent Artists, Writers, and Performers .....	\$7.0	
<b>Subsector 712—Museums, Historical Sites and Similar Institutions</b>			
712110 .....	Museums .....	\$7.0	
712120 .....	Historical Sites .....	\$7.0	
712130 .....	Zoos and Botanical Gardens .....	\$7.0	
712190 .....	Nature Parks and Other Similar Institutions .....	\$7.0	
<b>Subsector 713—Amusement, Gambling and Recreation Industries</b>			
713110 .....	Amusement and Theme Parks .....	\$7.0	
713120 .....	Amusement Arcades .....	\$7.0	
713210 .....	Casinos (except Casino Hotels) .....	\$7.0	
713290 .....	Other Gambling Industries .....	\$7.0	
713910 .....	Golf Courses and Country Clubs .....	\$7.0	
713920 .....	Skiing Facilities .....	\$7.0	
713930 .....	Marinas .....	\$7.0	
713940 .....	Fitness and Recreational Sports Centers .....	\$7.0	
713950 .....	Bowling Centers .....	\$7.0	
713990 .....	All Other Amusement and Recreation Industries .....	\$7.0	
<b>Sector 72—Accommodation and Food Services</b>			
<b>Subsector 721—Accommodation</b>			
721110 .....	Hotels (except Casino Hotels) and Motels .....	\$30.0	
721120 .....	Casino Hotels .....	30.0	
721191 .....	Bed and Breakfast Inns .....	\$7.0	
721199 .....	All Other Traveler Accommodation .....	\$7.0	
721211 .....	RV (Recreational Vehicle) Parks and Campgrounds .....	\$7.0	
721214 .....	Recreational and Vacation Camps (except Campgrounds) .....	\$7.0	
721310 .....	Rooming and Boarding Houses .....	\$7.0	
<b>Subsector 722—Food Services and Drinking Places</b>			
722310 .....	Food Service Contractors .....	35.5	
722320 .....	Caterers .....	\$7.0	
722330 .....	Mobile Food Services .....	\$7.0	
722410 .....	Drinking Places (Alcoholic Beverages) .....	\$7.0	
722511 .....	Full-Service Restaurants .....	7.0	
722513 .....	Limited-Service Restaurants .....	10.0	
722514 .....	Cafeterias, Grill Buffets, and Buffets .....	25.5	
722515 .....	Snack and Nonalcoholic Beverage Bars .....	7.0	
<b>Sector 81—Other Services (Except Public Administration)</b>			
<b>Subsector 811—Repair and Maintenance</b>			
811111 .....	General Automotive Repair .....	\$7.0	

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
811112 .....	Automotive Exhaust System Repair .....	\$7.0	.....
811113 .....	Automotive Transmission Repair .....	\$7.0	.....
811118 .....	Other Automotive Mechanical and Electrical Repair and Maintenance .....	\$7.0	.....
811121 .....	Automotive Body, Paint and Interior Repair and Maintenance .....	\$7.0	.....
811122 .....	Automotive Glass Replacement Shops .....	\$10.0	.....
811191 .....	Automotive Oil Change and Lubrication Shops .....	\$7.0	.....
811192 .....	Car Washes .....	\$7.0	.....
811198 .....	All Other Automotive Repair and Maintenance .....	\$7.0	.....
811211 .....	Consumer Electronics Repair and Maintenance .....	\$7.0	.....
811212 .....	Computer and Office Repair and Maintenance .....	25.5	.....
811213 .....	Communication Equipment Repair and Maintenance .....	10.0	.....
811219 .....	Other Electronic and Precision Equipment Repair and Maintenance ..	19.0	.....
811310 .....	Commercial and Industrial Machinery and Equipment (except Auto- motive and Electronic) Repair and Maintenance.	\$7.0	.....
811411 .....	Home and Garden Equipment Repair and Maintenance .....	\$7.0	.....
811412 .....	Appliance Repair and Maintenance .....	14.0	.....
811420 .....	Reupholstery and Furniture Repair .....	\$7.0	.....
811430 .....	Footwear and Leather Goods Repair .....	\$7.0	.....
811490 .....	Other Personal and Household Goods Repair and Maintenance .....	\$7.0	.....
<b>Subsector 812—Personal and Laundry Services</b>			
812111 .....	Barber Shops .....	\$7.0	.....
812112 .....	Beauty Salons .....	\$7.0	.....
812113 .....	Nail Salons .....	\$7.0	.....
812191 .....	Diet and Weight Reducing Centers .....	19.0	.....
812199 .....	Other Personal Care Services .....	\$7.0	.....
812210 .....	Funeral Homes and Funeral Services .....	\$7.0	.....
812220 .....	Cemeteries and Crematories .....	19.0	.....
812310 .....	Coin-Operated Laundries and Drycleaners .....	\$7.0	.....
812320 .....	Dry-cleaning and Laundry Services (except Coin-Operated) .....	5.0	.....
812331 .....	Linen Supply .....	30.0	.....
812332 .....	Industrial Launderers .....	35.5	.....
812910 .....	Pet Care (except Veterinary) Services .....	\$7.0	.....
812921 .....	Photo Finishing Laboratories (except One-Hour) .....	19.0	.....
812922 .....	One-Hour Photo Finishing .....	\$14.0	.....
812930 .....	Parking Lots and Garages .....	35.5	.....
812990 .....	All Other Personal Services .....	\$7.0	.....
<b>Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations</b>			
813110 .....	Religious Organizations .....	\$7.0	.....
813211 .....	Grantmaking Foundations .....	30.0	.....
813212 .....	Voluntary Health Organizations .....	25.5	.....
813219 .....	Other Grant Making and Giving Services .....	35.5	.....
813311 .....	Human Rights Organizations .....	25.5	.....
813312 .....	Environment, Conservation and Wildlife Organizations .....	14.0	.....
813319 .....	Other Social Advocacy Organizations .....	\$7.0	.....
813410 .....	Civic and Social Organizations .....	\$7.0	.....
813910 .....	Business Associations .....	\$7.0	.....
813920 .....	Professional Organizations .....	14.0	.....
813930 .....	Labor Unions and Similar Labor Organizations .....	\$7.0	.....
813940 .....	Political Organizations .....	\$7.0	.....
813990 .....	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations).	\$7.0	.....
<b>Sector 92—Public Administration</b> <sup>19</sup>			

(Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, state, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments.)

## Footnotes

1. NAICS codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, and 221122—A firm is small if, including its affili-

ates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric

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output for the preceding fiscal year did not exceed 4 million megawatt hours.

2. *NAICS code 237990*—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

3. *NAICS code 311421*—For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

4. *NAICS code 324110*—For purposes of Government procurement, the petroleum refiner must be a concern that has no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. *NAICS code 326211*—For Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(a) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(b) The value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(c) The value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. *NAICS Subsectors 333, 334, 335 and 336*—For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a “manufacturer” although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.

7. *NAICS code 336413*—Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.

8. *NAICS Codes 522110, 522120, 522130, 522190, 522210 and 522293*—A financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. “Assets” for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

9. *NAICS code 531190*—Leasing of building space to Federal Government by Owners: For Government procurement, a size standard of \$35.5 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

10. *NAICS codes 488510 (part) 531210, 541810, 561510, 561520, and 561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

11. *NAICS codes 541711 and 541712*—For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(a) “Research and Development” means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(c) “Research and Development” for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

12. *NAICS code 561210*—Facilities Support Services:

(a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50% or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) “Facilities Support Services” requires the performance of three or more separate activities in the areas of services or specialty trade contractors industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, etc.), all such specialty trade contractors activities are considered a single activity and classified as “Building and Property Specialty Trade



Services.” Since “Building and Property Specialty Trade Services” is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as “Facilities Support Services.”

13. *NAICS code 238990—Building and Property Specialty Trade Services:* If a procurement requires the use of multiple specialty trade contractors (*i.e.*, plumbing, painting, plastering, carpentry, etc.), and no specialty trade accounts for 50% or more of the value of the procurement, all such specialty trade contractors activities are considered a single activity and classified as Building and Property Specialty Trade Services.

14. *NAICS 562910—Environmental Remediation Services:*

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts), although the general purpose of the procurement need not necessarily include remedial actions. Also, the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.*, engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Specialty Trade Contractors; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services; Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procure-

ment can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

15. *Subsector 483—Water Transportation—Offshore Marine Services:* The applicable size standard shall be \$28.0 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

16. *NAICS codes 611519—Job Corps Centers:* For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

17. *NAICS code 115310 (Support Activities for Forestry)—Forest Fire Suppression and Fuels Management Services* are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

18. *NAICS code 541519—An Information Technology Value Added Reseller* provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15% and not more than 50% of value added services as measured by the total price

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less the cost of information technology hardware, computer software, and profit. If the contract consists of less than 15% of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50% of value added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement. To qualify as an Information Technology Value Added Reseller for purposes of SBA assistance, other than for Government procurement, a concern must be primarily engaged in providing information technology equipment and computer software and provide value added services which account for at least 15% of its receipts but not more than 50% of its receipts.

19. *NAICS Sector 92*—Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, State, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments. Concerns performing operational services for the administration of a government program are classified under the NAICS private sector industry based on the activities performed. Similarly, procurements for these types of services are classified under the NAICS private sector industry that best describes the activities to be performed. For example, if a government agency issues a procurement for law enforcement services, the requirement would be classified using one of the NAICS industry codes under 56161, Investigation, Guard, and Armored Car Services.

[65 FR 30840, May 15, 2000]

EDITORIAL NOTES: 1. At 73 FR 12870, Mar. 11, 2008, § 121.201 was amended; however, several amendments could not be incorporated due to inaccurate amendatory instruction.

2. At 77 FR 56755, Sept. 14, 2012, the table in § 121.201 was amended by removing entry 315912; however, the amendment could not be incorporated because that entry does not exist.

3. For FEDERAL REGISTER citations affecting § 121.201, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

EFFECTIVE DATE NOTES: 1. At 77 FR 72701, Dec. 6, 2012, the table in § 121.201 was amended by revising entries for “561311,” “561312,” “561320,” “561330,” “561410,” “561421,” “561422,” “561431,” “561439,” “561440,” “561450,” “561491,” “561492,” “561499,” “561510,” “561520,” “561591,” “561599,” “561611,” “561612,” “561613,” “561621,” “561622,” “561710,” “561740,” “561910,” “561920,” “561990,” “562111,” “562112,” “562119,” “562211,” “562212,” “562213,” “562219,” “562910,” “562920”, effective Jan. 7, 2013. For the convenience of the user, the revised text is set forth as follows:

### § 121.201 What size standards has SBA identified by North American Industry Classification System codes?

\* \* \* \* \*

#### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *			
561311	Employment Placement Agencies .....	\$25.5	
561312	Executive Search Services .....	25.5	
561320	Temporary Help Services .....	25.5	
561330	Professional Employer Organizations .....	25.5	
561410	Document Preparation Services .....	14.0	
561421	Telephone Answering Services .....	14.0	
561422	Telemarketing Bureaus and Other contact Centers .....	14.0	
561431	Private Mail Centers .....	14.0	
561439	Other Business Service Centers (including Copy Shops) .....	14.0	
561440	Collection Agencies .....	14.0	
561450	Credit Bureaus .....	14.0	
561491	Repossession Services .....	14.0	
561492	Court Reporting and Stenotype Services .....	14.0	
561499	All Other Business Support Services .....	14.0	
561510	Travel Agencies <sup>10</sup> .....	<sup>10</sup> 19.0	
561520	Tour Operators <sup>10</sup> .....	<sup>10</sup> 19.0	
561591	Convention and Visitors Bureaus .....	19.0	
561599	All Other Travel Arrangement and Reservation Services .....	19.0	
561611	Investigation Services .....	19.0	
561612	Security Guards and Patrol Services .....	19.0	
561613	Armored Car Services .....	19.0	
561621	Security Systems Services (except Locksmiths) .....	19.0	
561622	Locksmiths .....	19.0	

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
561710	Exterminating and Pest Control Services .....	10.0	
*	*	*	*
561740	Carpet and Upholstery Cleaning Services .....	5.0	
*	*	*	*
561910	Packaging and Labeling Services .....	10.0	
561920	Convention and Trade Show Organizers <sup>10</sup> .....	<sup>10</sup> 10.0	
561990	All Other Support Services .....	10.0	
*	*	*	*
562111	Solid Waste Collection .....	35.5	
562112	Hazardous Waste Collection .....	35.5	
562119	Other Waste Collection .....	35.5	
562211	Hazardous Waste Treatment and Disposal .....	35.5	
562212	Solid Waste Landfill .....	35.5	
562213	Solid Waste Combustors and Incinerators .....	35.5	
562219	Other Nonhazardous Waste Treatment and Disposal .....	35.5	
562910	Remediation Services .....	19.0	
*	*	*	*
562920	Materials Recovery Facilities .....	19.0	
*	*	*	*
*	*	*	*

<sup>10</sup> NAICS codes 488510 (part) 531210, 541810, 561510, 561520, and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

2. At 77 FR 72708, Dec. 6, 2012, the table in § 121.201 was amended by revising entries for “511210”, “512110”, “512131”, “512199”, “512290”, “515111”, “515112”, “515120”, “515210”, “517410”, “517919”, “518210”, “519110”, “519120”, and “519190”, effective

Jan. 7, 2013. For the convenience of the user, the revised text is set forth as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

\* \* \* \* \*

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
511210	Software Publishers .....	\$35.5	
*	*	*	*
512110	Motion Picture and Video Production .....	30.0	
*	*	*	*
512131	Motion Picture Theaters (except Drive-Ins) .....	35.5	
*	*	*	*
512199	Other Motion Picture and Video Industries .....	19.0	

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### SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
512290	Other Sound Recording Industries .....	10.0	
*	*	*	*
515111	Radio Networks .....	30.0	
515112	Radio Stations .....	35.5	
515120	Television Broadcasting .....	35.5	
515210	Cable and Other Subscription Programming .....	35.5	
*	*	*	*
517410	Satellite Telecommunications .....	30.0	
*	*	*	*
517919	All Other Telecommunications .....	30.0	
*	*	*	*
518210	Data Processing, Hosting, and Related Services .....	30.0	
*	*	*	*
519110	News Syndicates .....	25.5	
519120	Libraries and Archives .....	14.0	
*	*	*	*
519190	All Other Information Services .....	25.5	
*	*	*	*

3. At 77 FR 76224, Dec. 27, 2012, §121.201 was amended by revising paragraph (b) of footnote 11 at the end of the table “Small Business Size Standards by NAICS Industry,” effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

#### § 121.201 What size standards has SBA identified by North American Industry Classification System codes?

\* \* \* \* \*

Small Business Size Standards by NAICS Industry

\* \* \* \* \*

Footnotes

\* \* \* \* \*

11. \* \* \*

(b) For purposes of the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) Programs only, a different definition has been established by law. See §121.702 of these regulations.

\* \* \* \* \*

#### SIZE ELIGIBILITY REQUIREMENTS FOR SBA FINANCIAL ASSISTANCE

#### § 121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans (other than for 7(a) Business Loans for the period beginning May 5, 2009 and ending on September 30, 2010) and for Disaster Loans (other than physical disaster loans), an applicant business concern must satisfy two criteria:

(1) The size of the applicant alone (without affiliates) must not exceed the size standard designated for the industry in which the applicant is primarily engaged; and

(2) The size of the applicant combined with its affiliates must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher. These size standards are set forth in § 121.201.

(b) For Development Company programs and, for the period beginning May 5, 2009 and ending on September 30, 2010, for 7(a) Business Loans, an applicant must meet one of the following standards:

(1) The same standards applicable under paragraph (a) of this section; or

(2) Including its affiliates, tangible net worth not in excess of \$8.5 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of \$3.0 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (b)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Sum the results obtained in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) For the Small Business Investment Company (SBIC) program, an applicant must meet one of the following standards:

(1) The same standards applicable under paragraph (a) of this section; or

(2) Including its affiliates, tangible net worth not in excess of \$18 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of \$6 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (c)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(d) For Surety Bond Guarantee assistance—

(1) A business concern, combined with its affiliates, must meet the size standard for the primary industry in which such business concern, combined with its affiliates, is engaged.

(2) For any contract or subcontract, public or private, to be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita or Wilma, a construction (general or special trade) concern or concern performing a contract for services is small if it meets the size standard set forth in paragraph (d)(1) of this section, or the average annual receipts of the concern, together with its affiliates, do not exceed \$7 million, whichever is higher.

(e) The applicable size standards for purposes of SBA's financial assistance programs, excluding the Surety Bond

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Guarantee assistance program, are increased by 25% whenever the applicant agrees to use all of the financial assistance within a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication "Area Trends in Employment and Unemployment."

[61 FR 3286, Jan. 31, 1996, as amended at 66 FR 30648, June 7, 2001; 67 FR 3056, Jan. 23, 2002; 69 FR 29204, May 21, 2004; 70 FR 69047, 69052, Nov. 14, 2005; 70 FR 72594, Dec. 6, 2005; 71 FR 62208, Oct. 24, 2006; 73 FR 41254, July 18, 2008; 74 FR 20580, May 5, 2009; 74 FR 36110, July 22, 2009; 75 FR 48550, Aug. 11, 2010]

### § 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for applications under the Preferred Lenders Program (PLP), the Disaster Loan program, the SBIC program, and the New Markets Venture Capital (NMCV) program.

(b) For the Preferred Lenders program, size is determined as of the date of approval of the loan by the Preferred Lender.

(c) For disaster loan assistance (other than physical disaster loans), size status is determined as of the date the disaster commenced, as set forth in the Disaster Declaration. For economic injury disaster loan assistance under disaster declarations for Hurricanes Katrina, Rita, and Wilma, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before December 6, 2005, whether denied because of size status or pending, such applications shall be deemed resubmitted on December 6, 2005. For pre-disaster mitigation loans, size status is determined as of the date SBA accepts a complete Pre-Disaster Mitigation Small Business Loan Application for processing. Refer to §123.408 of this chapter to find out what SBA considers to be a complete Pre-Disaster Mitigation Small Business Loan Application.

(d) For financial assistance from an SBIC licensee or an NMVC company, size is determined as of the date a concern's application is accepted for proc-

essing by the SBIC or the NMVC company.

(e) Changes in size after the applicable date when size is determined will not disqualify an applicant for assistance.

[61 FR 3286, Jan. 31, 1996, as amended at 64 FR 48276, Sept. 3, 1999; 67 FR 11880, Mar. 15, 2002; 67 FR 62337, Oct. 7, 2002; 69 FR 29204, May 21, 2004; 70 FR 72594, Dec. 6, 2005; 73 FR 41254, July 18, 2008; 75 FR 48550, Aug. 11, 2010]

### § 121.303 What size procedures are used by SBA before it makes a formal size determination?

(a) A concern that submits an application for financial assistance is deemed to have certified that it is small under the applicable size standard. SBA may question the concern's status based on information supplied in the application or from any other source.

(b) A small business investment company, a development company, a surety bond company, or a preferred lender may accept as true the size information provided by an applicant, unless credible evidence to the contrary is apparent.

(c) Size is initially considered by the individual with final financial assistance authority. This is not a formal size determination. A formal determination may be requested prior to a denial of eligibility based on size.

(d) An applicant may request a formal size determination when assistance has been denied for size ineligibility. Except for disaster loan eligibility, a request for a formal size determination must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates. For disaster loan assistance, the request for a size determination must be made to the Area Director for the Disaster Area Office which denied the assistance.

(e) There are no time limitations for making a formal size determination for purposes of financial assistance. The official making the formal size determination must provide a copy of the determination to the applicant, to the requesting SBA official, and to other interested SBA program officials.

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### **§ 121.304 What are the size requirements for refinancing an existing SBA loan?**

(a) A concern that applies to refinance an existing SBA loan or guarantee will be considered small for the refinancing even though its size has increased since the date of the original financing to exceed its applicable size standard, provided that:

(1) The increase in size is due to natural growth (as distinguished from merger, acquisition or similar management action); and

(2) SBA determines that refinancing is necessary to protect the Government's financial interest.

(b) If a concern's size has increased other than by natural growth, the concern and its affiliates must be small at the time the application for refinancing is accepted for processing by SBA.

### **§ 121.305 What size eligibility requirements exist for obtaining financial assistance relating to particular procurements?**

A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.

#### **SIZE ELIGIBILITY REQUIREMENTS FOR GOVERNMENT PROCUREMENT**

### **§ 121.401 What procurement programs are subject to size determinations?**

The rules set forth in §§121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, SBA's 8(a) Business Development program, SBA's HUBZone program, the Women Owned Small Business (WOSB) Federal Contract Program, SBA's Service-Disabled Veteran-Owned Small Business program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

[75 FR 62280, Oct. 7, 2010]

### **§ 121.402 What size standards are applicable to Federal Government Contracting programs?**

(a) A concern must not exceed the size standard for the NAICS code specified in the solicitation. The contracting officer must specify the size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may amend the solicitation and use the new size standard.

(b) The procuring agency contracting officer, or authorized representative, designates the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the NAICS United States Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. Acquisitions for supplies must be classified under the appropriate manufacturing NAICS code, not under a Wholesale Trade or Retail Trade NAICS code. Acquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code, not under a wholesale trade or retail trade NAICS code. A concern that submits an offer or quote for a contract where the NAICS code assigned to the contract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it meets the requirements set forth in §121.406(b).

(c) The NAICS code assigned to a procurement and its corresponding size standard is final unless timely appealed to SBA's Office of Hearings and Appeals (OHA), or unless SBA assigns an NAICS code or size standard as provided in paragraph (d) of this section.

(d) An unclear, incomplete or missing NAICS code designation or size standard in the solicitation may be clarified, completed or supplied by SBA in connection with a formal size determination or size appeal.

(e) Any offeror or other interested party adversely affected by an NAICS code designation or size standard designation may appeal the designations to OHA under part 134 of this chapter.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004; 75 FR 61604, Oct. 6, 2010; 76 FR 5683, Feb. 2, 2011; 76 FR 8252, Feb. 11, 2011]

**§ 121.403 Are SBA size determinations and NAICS code designations binding on parties?**

Formal size determinations and NAICS code designations made by authorized SBA officials are binding upon the parties. Opinions otherwise provided by SBA officials to contracting officers or others are advisory in nature, and are not binding or appealable.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

**§ 121.404 When does SBA determine the size status of a business concern?**

(a) SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer (or other formal response to a solicitation) which includes price.

(b) A concern applying to be certified as a Participant in SBA's 8(a) Business Development program (under part 124, subpart A, of this chapter), as a small disadvantaged business (under part 124, subpart B, of this chapter), or as a HUBZone small business (under part 126 of this chapter) must qualify as a small business for its primary industry classification as of the date of its application and the date of certification by SBA.

(c) The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(d) Size status for purposes of compliance with the nonmanufacturer rule set forth in § 121.406(b)(1) and the osten-

sible subcontractor rule set forth in § 121.103(h)(4) is determined as of the date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding.

(e) For subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. The applicable size standard is that which is set forth in § 121.410 and which is in effect at the time the concern self-certifies that it is small for the subcontract.

(f) For purposes of two-step sealed bidding under subpart 14.5 of the FAR, 48 CFR, a concern must qualify as small as of the date that it certifies that it is small as part of its step one proposal.

(g) A concern that qualified as a small business at the time it receives a contract is considered a small business throughout the life of that contract. Where a concern grows to be other than small, the procuring agency may exercise options and still count the award as an award to a small business. However, the following exceptions apply:

(1) Within 30 days of an approved contract novation, a contractor must recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small. If the contractor is other than small, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its small business goals.

(2) In the case of a merger or acquisition, where contract novation is not required, the contractor must, within 30 days of the transaction becoming final, recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small. If the contractor is other than small, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its small business goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new size status.

(3) For the purposes of contracts with durations of more than five years (including options), including Multiple



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Award Schedule (MAS) Contracts, Multiple Agency Contracts (MACs) and Government-wide Acquisition Contracts (GWACs), a contracting officer must request that a business concern re-certify its small business size status no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option thereafter. If the contractor certifies that it is other than small, the agency can no longer count the options or orders issued pursuant to the contract towards its small business prime contracting goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new size status.

(i) A business concern that certified itself as other than small, either initially or prior to an option being exercised, may recertify itself as small for a subsequent option period if it meets the applicable size standard.

(ii) Re-certification does not change the terms and conditions of the contract. The limitations on subcontracting, non-manufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(iii) A request for a size re-certification shall include the size standard in effect at the time of re-certification that corresponds to the NAICS code that that was initially assigned to the contract.

(iv) A contracting officer must assign a NAICS code and size standard to each order under a long-term contract. The NAICS code and size standard assigned to an order must correspond to a NAICS code and size standard assigned to the underlying long-term contract. A concern will be considered small for that order only if it certified itself as small under the same or lower size standard.

(v) Where the contracting officer explicitly requires concerns to recertify their size status in response to a solicitation for an order, SBA will determine size as of the date the concern submits its self-representation as part of its response to the solicitation for the order.

(vi) A Blanket Purchase Agreement (BPA) is not a contract. Goods and

services are acquired under a BPA when an order is issued. Thus, a concern's size may not be determined based on its size at the time of a response to a solicitation for a BPA.

(4) If during contract performance a subcontractor performs primary and vital requirements of a contract, the contractor and its ostensible subcontractor will be treated as joint venturers. *See* §121.103(h)(4). If the two firms exceed the applicable size standard in the aggregate, the contractor cannot continue to certify as small for that contract or for any task order under that contract.

(h) A follow-on or renewal contract is a new contracting action. As such, size is determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price for the follow-on or renewal contract.

[69 FR 29205, May 21, 2004, as amended at 71 FR 19813, Apr. 18, 2006; 71 FR 66443, Nov. 15, 2006; 76 FR 5683, Feb. 2, 2011; 76 FR 8252, Feb. 11, 2011]

### **§ 121.405 May a business concern self-certify its small business size status?**

(a) A concern must self-certify it is small under the size standard specified in the solicitation, or as clarified, completed or supplied by SBA pursuant to §121.402(d).

(b) A contracting officer may accept a concern's self-certification as true for the particular procurement involved in the absence of a written protest by other offerors or other credible information which causes the contracting officer or SBA to question the size of the concern.

(c) Procedures for protesting the self-certification of an offeror are set forth in §§121.1001 through 121.1009.

### **§ 121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, or 8(a) contract?**

(a) *General.* In order to qualify as a small business concern for a small

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business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, or 8(a) contract to provide manufactured products or other supply items, an offeror must either:

(1) Be the manufacturer or producer of the end item being procured (and the end item must be manufactured or produced in the United States); or

(2) Comply with the requirements of paragraph (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Simplified Acquisition Procedures.

(b) *Nonmanufacturers.* (1) A firm may qualify as a small business concern for a requirement to provide manufactured products or other supply items as a nonmanufacturer if it:

(i) Does not exceed 500 employees;

(ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied;

(iii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and

(iv) Will supply the end item of a small business manufacturer, processor or producer made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(5) of this section.

(2) For size purposes, there can be only one manufacturer of the end item being acquired. The manufacturer is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The end item must possess characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semifinished as a raw material to be used in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers of the end item. Firms that add substances, parts, or components to an existing end item to modify its performance will not be considered the

end item manufacturer where those identical modifications can be performed by and are available from the manufacturer of the existing end item:

(i) SBA will evaluate the following factors in determining whether a concern is the manufacturer of the end item:

(A) The proportion of total value in the end item added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit;

(B) The importance of the elements added by the concern to the function of the end item, regardless of their relative value; and

(C) The concern's technical capabilities; plant, facilities and equipment; production or assembly line processes; packaging and boxing operations; labeling of products; and product warranties.

(ii) Firms that provide computer and other information technology equipment primarily consisting of component parts (such as motherboards, video cards, network cards, memory, power supplies, storage devices, and similar items) who install components totaling less than 50% of the value of the end item are generally not considered the manufacturer of the end item.

(3) The nonmanufacturer rule applies only to procurements that have been assigned a manufacturing or supply NAICS code. The nonmanufacturer rule does not apply to contracts that have been assigned a service, construction, or specialty trade construction NAICS code.

(4) The nonmanufacturer rule applies only to the supply component of a requirement classified as a manufacturing or supply contract. If a requirement is classified as a service contract, but also has a supply component, the nonmanufacturer rule does not apply to the supply component of the requirement.

*Example 1 to paragraph (b)(4).* A procuring agency seeks to acquire computer integration and maintenance services. Included within that requirement, the agency also seeks to acquire some computer hardware. If the procuring agency determines that the principal nature of the procurement is services and classifies the procurement as a services procurement, the nonmanufacturer rule does not apply to the computer hardware portion of the requirement. This means that

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while a contractor must meet the applicable performance of work requirement set forth in §125.6 for the services portion of the contract, the contractor does not have to supply the computer hardware of a small business manufacturer.

*Example 2 to paragraph (b)(4).* A procuring agency seeks to acquire computer hardware, as well as computer integration and maintenance services. If the procuring agency determines that the principal nature of the procurement is for supplies and classifies the procurement as a supply procurement, the nonmanufacturer rule applies to the computer hardware portion of the requirement. A firm seeking to qualify as a small business nonmanufacturer must supply the computer hardware manufactured by a small business. Because the requirement is classified as a supply contract, the contractor does not have to meet the performance of work requirement set forth in §125.6 for the services portion of the contract.

(5) The Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iii) of this section under the following two circumstances:

(i) The contracting officer has determined that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications (including period for performance) required by a particular solicitation and SBA reviews and accepts that determination; or

(ii) SBA determines that no small business manufacturer or processor of the product or class of products is available to participate in the Federal procurement market.

(6) The two waiver possibilities identified in paragraph (b)(5) of this section are called “individual” and “class” waivers respectively, and the procedures for requesting and granting them are contained in §121.1204.

(7) Any SBA waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act.

(c) *Kit assemblers.* (1) Where the manufactured item being acquired is a kit of supplies or other goods provided by an offeror for a special purpose, the offeror cannot exceed 500 employees, and 50 percent of the total value of the components of the kit must be manufactured by business concerns in the United States which are small under the size standards for the NAICS codes

of the components being assembled. The offeror need not itself be the manufacturer of any of the items assembled.

(2) Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such item shall be excluded from the calculation of total value in paragraph (c)(1) of this section.

(d) *Simplified Acquisition Procedures.* Where the procurement of a manufactured item is processed under Simplified Acquisition Procedures, as defined in §13.101 of the Federal Acquisition Regulation (FAR) (48 CFR 13.101), and where the anticipated cost of the procurement will not exceed \$25,000, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States, and the offeror does not exceed 500 employees. The offeror need not itself be the manufacturer of any of the items acquired.

(e) These requirements do not apply to small business concern subcontractors.

[61 FR 3286, Jan. 31, 1996; 61 FR 7986, Mar. 1, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004; 76 FR 8252, Feb. 11, 2011]

### § 121.407 What are the size procedures for multiple item procurements?

If a procurement calls for two or more specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services, the offeror must meet the size standard for each end item or service item for which it submits an offer. If the procurement calls for more than one specific end item or type of service and an offeror is required to submit an offer on all items, the offeror may qualify as a small business for the procurement if it meets the size standard of the item which accounts for the greatest percentage of the total contract value.

### § 121.408 What are the size procedures for SBA's Certificate of Competency Program?

(a) A firm which applies for a COC must file an “Application for Small

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Business Size Determination” (SBA Form 355). If the initial review of SBA Form 355 indicates the applicant, including its affiliates, is small for purposes of the COC program, SBA will process the application for COC. If the review indicates the applicant, including its affiliates, is other than small, SBA will initiate a formal size determination as set forth in §121.1009. In such a case, SBA will not further process the COC application until a formal size determination is made.

(b) A concern is ineligible for a COC if a formal SBA size determination finds the concern other than small.

### **§ 121.409 What size standard applies in an unrestricted procurement for Certificate of Competency purposes?**

For the purpose of receiving a Certificate of Competency in an unrestricted procurement, the applicable size standard is that corresponding to the NAICS code set forth in the solicitation. For a manufactured product, a concern must also furnish a domestically produced or manufactured product, regardless of the size status of the product manufacturer. The offeror need not be the manufacturer of any of the items acquired.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

### **§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?**

For subcontracting purposes pursuant to sections 8(d) of the Small Business Act, a concern is small for subcontracts which relate to Government procurements if it does not exceed the size standard for the NAICS code that the prime contractor believes best describes the product or service being acquired by the subcontract. However, subcontracts for engineering services awarded under the National Energy Policy Act of 1992 have the same size standard as Military and Aerospace Equipment and Military Weapons under NAICS code 541330.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004; 74 FR 46313, Sept. 9, 2009]

### **§ 121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?**

(a) Prime contractors may rely on the information contained in the Central Contractor Registration (CCR), or equivalent data base maintained or sanctioned by SBA, as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. Even though a concern is on a small business source list, it must still qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

(b) Upon determination of the successful subcontract offeror for a competitive subcontract, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror.

(c) The self-certification of a concern subcontracting or proposing to subcontract under section 8(d) of the Small Business Act may be protested by the contracting officer, the prime contractor, the appropriate SBA official or any other interested party.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29205, May 21, 2004]

### **§ 121.412 What are the size procedures for partial small business set-asides?**

A firm is required to meet size standard requirements only for the small business set-aside portion of a procurement, and is not required to qualify as a small business for the unrestricted portion.

### **§ 121.413 [Reserved]**

## **SIZE ELIGIBILITY REQUIREMENTS FOR SALES OR LEASE OF GOVERNMENT PROPERTY**

### **§ 121.501 What programs for sales or leases of Government property are subject to size determinations?**

Sections 121.501 through 121.512 apply to small business size determinations for the purpose of the sale or lease of Government property, including the Timber Sales Program, the Special Salvage Timber Sales Program, and

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the sale of Government petroleum, coal and uranium.

### **§ 121.502 What size standards are applicable to programs for sales or leases of Government property?**

(a) Unless otherwise specified in this part—

(1) A concern primarily engaged in manufacturing is small for sales or leases of Government property if it does not exceed 500 employees;

(2) A concern not primarily engaged in manufacturing is small for sales or leases of Government property if it has annual receipts not exceeding \$7.0 million.

(b) Size status for such sales and leases is determined by the primary industry of the applicant business concern.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 3056, Jan. 23, 2002; 70 FR 72594, Dec. 6, 2005; 73 FR 41254, July 18, 2008]

### **§ 121.503 Are SBA size determinations binding on parties?**

Formal size determinations based upon a specific Government sale or lease, or made in response to a request from another Government agency under § 121.901, are binding upon the parties. Other SBA opinions provided to contracting officers or others are only advisory, and are not binding or appealable.

### **§ 121.504 When does SBA determine the size status of a business concern?**

SBA determines the size status of a concern (including its affiliates) as of the date the concern submits a written self-certification that it is small to the Government as part of its initial offer including price where there is a specific sale or lease at issue, or as set forth in § 121.903 if made in response to a request of another Government agency.

### **§ 121.505 What is the effect of a self-certification?**

(a) A contracting officer may accept a concern's self-certification as true for the particular sale or lease involved, in the absence of a written protest by other offerors or other credible information which would cause the

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contracting officer or SBA to question the size of the concern.

(b) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001 through 121.1009.

### **§ 121.506 What definitions are important for sales or leases of Government-owned timber?**

(a) *Forest product industry* means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw materials.

(b) *Logging of timber* means felling and bucking, yarding, and/or loading. It does not mean hauling.

(c) *Manufacture of logs* means, at a minimum, breaking down logs into rough cuts of the finished product.

(d) *Sell* means, in addition to its usual and customary meaning, the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber.

(e) *Significant logging of timber* means that a concern uses its own employees to perform at least two of the following: felling and bucking, yarding, and loading.

### **§ 121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage Timber)?**

(a) To be small for purposes of the sale of Government-owned timber (other than Special Salvage Timber) a concern must:

(1) Be primarily engaged in the logging or forest products industry;

(2) Not exceed 500 employees, taking into account its affiliates; and

(3) If it does not intend at the time of the offer to resell the timber—

(i) Agree that it will manufacture the logs with its own facilities or those of another business which meets the requirements of paragraphs (a)(1) and (a)(2) of this section;

(ii) Agree that if it eventually resells the timber, it will resell no more than

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30% of the sawtimber volume to other businesses which do not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(iii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume to businesses which do meet the requirements of paragraphs (a)(1) and (a)(2) of this section; or

(4) If it intends at the time of offer to resell the timber—

(i) Agree that it will not sell more than 30% of such timber (50% of such timber if the concern is an Alaskan business) to a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(ii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume (or at least 50% of the sawtimber volume, if it is an Alaskan business) to businesses which meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(b) For a period of three years following the date upon which a concern purchases timber under a small business set-aside (other than through the Special Salvage Timber Sale program), it must maintain a record of:

(1) The name, address and size status of every concern to which it sells the timber or sawlogs; and

(2) The species, grades and volumes of sawlogs sold.

(c) For a period of three years following the date upon which a concern purchases timber, it must by contract require all small business repurchasers of the sawlogs or timber it purchased under the small business set-aside to maintain the records described in paragraph (b) of this section.

### **§ 121.508 What are the size standards and other requirements for the purchase of Government-owned Special Salvage Timber?**

(a) In order to purchase Government-owned Special Salvage Timber from the United States Forest Service or the Bureau of Land Management as a small business, a concern must:

(1) Be primarily engaged in the logging or forest product industry;

(2) Have, together with its affiliates, no more than twenty-five employees during any pay period for the last twelve months; and

(3) If it does not intend at the time of offer to resell the timber—

(i) Agree that it will manufacture a significant portion of the logs with its own employees; and

(ii) Agree that it will log the timber only with its own employees or with employees of another business which is eligible for award of a Special Salvage Timber sales contract; or

(4) If it intends at the time of offer to resell the timber, agree that it will perform a significant portion of timber logging with its own employees and that it will subcontract the remainder of the timber logging to a concern which is eligible for award of a Special Salvage Timber sales contract.

### **§ 121.509 What is the size standard for leasing of Government land for coal mining?**

A concern is small for this purpose if it:

(a) Together with its affiliates, does not have more than 250 employees;

(b) Maintains management and control of the actual mining operations of the tract; and

(c) Agrees that if it subleases the Government land, it will be to another small business, and that it will require its sublessors to agree to the same.

### **§ 121.510 What is the size standard for leasing of Government land for uranium mining?**

A concern is small for this purpose if it, together with its affiliates, does not have more than 100 employees.

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### § 121.511 What is the size standard for buying Government-owned petroleum?

A concern is small for this purpose if it is primarily engaged in petroleum refining and meets the size standard for a petroleum refining business.

### § 121.512 What is the size standard for stockpile purchases?

A concern is small for this purpose if:

(a) It is primarily engaged in the purchase of materials which are not domestic products; and

(b) Its annual receipts, together with its affiliates, do not exceed \$57.5 million.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 3056, Jan. 23, 2002; 70 FR 72594, Dec. 6, 2005; 73 FR 41254, July 18, 2008]

### SIZE ELIGIBILITY REQUIREMENTS FOR THE 8(A) BUSINESS DEVELOPMENT PROGRAM

### § 121.601 What is a small business for purposes of admission to SBA's 8(a) Business Development program?

An applicant must not exceed the size standard corresponding to its primary industry classification in order to qualify for admission to SBA's 8(a) Business Development Program.

[69 FR 29205, May 21, 2004]

### § 121.602 At what point in time must a 8(a) BD applicant be small?

A 8(a) BD applicant must be small for its primary industry at the time SBA certifies it for admission into the program.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

### § 121.603 How does SBA determine whether a Participant is small for a particular 8(a) BD subcontract?

(a) *Self certification by Participant.* A 8(a) BD Participant must certify that it qualifies as a small business under the NAICS code assigned to a particular 8(a) BD subcontract as part of its initial offer including price to the procuring agency. The Participant also must submit a copy of its offer, including its self-certification as to size, to the appropriate SBA district office at the same time it submits the offer to

the procuring agency. *See* § 121.404 for the time at which size is determined for, and § 121.406 for the applicability of the nonmanufacturer rule to, 8(a) BD procurements.

(b) *Verification of size by SBA.* Within 30 days of its receipt of a Participant's size self-certification for a particular 8(a) BD subcontract, the SBA district office serving the geographic area in which the Participant's principal office is located will review the Participant's self-certification and determine if it is small for purposes of that subcontract. The SBA district office will review the Participant's most recent financial statements and other relevant data and then notify the Participant of its decision.

(c) *Changes in size between date of self-certification and date of award.* (1) Where SBA verifies that the selected Participant is small for a particular procurement, subsequent changes in size up to the date of award, except those due to merger with or acquisition by another business concern, will not affect the firm's size status for that procurement.

(2) Where a Participant has merged with or been acquired by another business concern between the date of its self-certification and the date of award, the concern must recertify its size status, and SBA must verify the new certification before award can occur.

(d) *Finding Participant to be other than small.* (1) A Participant may request a formal size determination (pursuant to §§ 121.1001 through 121.1009) with the SBA Government Contracting Area Office serving the geographic area in which the principal office of the Participant is located within 5 working days of its receipt of notice from the SBA district office that it is not small for a particular 8(a) BD subcontract.

(2) Where the Participant does not timely request a formal size determination, SBA may accept the procurement in support of another Participant, or may rescind its acceptance of the offer for the 8(a) BD program, as appropriate.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29206, May 21, 2004]

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### § 121.604 Are 8(a) BD Participants considered small for purposes of other SBA assistance?

A concern which SBA determines to be a small business for the award of a 8(a) BD subcontract will be considered to have met applicable size eligibility requirements of other SBA programs where that assistance directly and primarily relates to the performance of the 8(a) BD subcontract in question.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

### SIZE ELIGIBILITY REQUIREMENTS FOR THE SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM

### § 121.701 What SBIR programs are subject to size determinations?

(a) These sections apply to size status for award of a funding agreement pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97-219, 15 U.S.C. 638(e) through (k)).

(b) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(c) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such work includes:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

EFFECTIVE DATE NOTES: 1. At 77 FR 76225, Dec. 27, 2012, the undesignated center heading immediately preceding §121.701 was revised, effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

### SIZE AND ELIGIBILITY REQUIREMENTS FOR THE SMALL BUSINESS INNOVATION RESEARCH (SBIR) AND SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAMS

2. At 77 FR 76225, Dec. 27, 2012, §121.701 was revised, effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

### § 121.701 What SBIR and STTR programs are subject to size and eligibility determinations and what definitions are important?

(a) These sections apply to SBA's SBIR and STTR programs, 15 U.S.C. 638.

(b) *Definitions.*

(1) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(2) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the purposes of the SBIR or STTR program.

(3) *Hedge fund* has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)). The hedge fund must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

(4) *Portfolio company* means any company that is owned in whole or part by a venture capital operating company, hedge fund, or private equity firm.

(5) *Private equity firm* has the meaning given the term "private equity fund" in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)). The private equity firm must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

(6) *Venture capital operating company* means an entity described in §121.103(b)(5)(i), (v), or (vi). The venture capital operating company must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

### § 121.702 What size standards are applicable to the SBIR program?

To be eligible for award of funding agreements in the SBA's Small Business Innovation Research (SBIR) program, a business concern must meet the requirements of paragraphs (a) and (b) below:

(a) *Ownership and control.* (1) An SBIR awardee must (i) be a concern which is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or



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permanent resident aliens in the United States; or

(ii) Be a concern which is at least 51% owned and controlled by another business concern that is itself at least 51% owned and controlled by individuals who are citizens of, or permanent resident aliens in the United States; or

(iii) Be a joint venture in which each entity to the venture must meet the requirements set forth in either paragraphs (a)(1)(i) or (a)(1)(ii) of this section.

(2) If an Employee Stock Ownership Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner.

(3) If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner.

(b) *Size*. An SBIR awardee, together with its affiliates, not have more than 500 employees.

[69 FR 70185, Dec. 3, 2004, as amended at 71 FR 69183, Nov. 30, 2006]

EFFECTIVE DATE NOTE: At 77 FR 76225, Dec. 27, 2012, § 121.702 was revised, effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

### § 121.702 What size and eligibility standards are applicable to the SBIR and STTR programs?

To be eligible for award of funding agreements in SBA's SBIR and STTR programs, a business concern must meet the requirements below at the time of award of an SBIR or STTR Phase I or Phase II funding agreement:

(a) *Ownership and control for the SBIR program*.

(1) An SBIR awardee must:

(i) Be a concern which is more than 50% directly owned and controlled by one or more individuals (who are citizens or permanent resident aliens of the United States), other business concerns (each of which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States), or any combination of these;

(ii) Be a concern which is more than 50% owned by multiple venture capital operating companies, hedge funds, private equity firms, or any combination of these (for agencies electing to use the authority in 15 U.S.C. 638(dd)(1)); or

(iii) Be a joint venture in which each entity to the joint venture must meet the requirements set forth in paragraph (a)(1)(i) or (a)(1)(ii) of this section. A joint venture that includes one or more concerns that meet the requirements of paragraph (a)(1)(ii) of this

section must comply with § 121.705(b) concerning registration and proposal requirements.

(2) No single venture capital operating company, hedge fund, or private equity firm may own more than 50% of the concern.

(3) If an Employee Stock Ownership Plan owns all or part of the concern, each stock trustee and plan member is considered an owner.

(4) If a trust owns all or part of the concern, each trustee and trust beneficiary is considered an owner.

(b) *Ownership and control for the STTR program*.

(1) An STTR awardee must:

(i) Be a concern which is more than 50% directly owned and controlled by one or more individuals (who are citizens or permanent resident aliens of the United States), other business concerns (each of which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States), or any combination of these; or

(ii) Be a joint venture in which each entity to the joint venture must meet the requirements set forth in paragraph (b)(1)(i) of this section.

(2) If an Employee Stock Ownership Plan owns all or part of the concern, each stock trustee and plan member is considered an owner.

(3) If a trust owns all or part of the concern, each trustee and trust beneficiary is considered an owner.

(c) *Size and affiliation*. An SBIR or STTR awardee, together with its affiliates, must not have more than 500 employees. Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. For the purposes of the SBIR and STTR programs, the following bases of affiliation apply:

(1) *Affiliation based on ownership*. For determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern's voting equity. However, SBA may find a concern an affiliate of an individual, concern, or entity that owns or has the power to control 40% or more of the voting equity based upon the totality of circumstances. If no individual, concern, or entity is found to control, SBA will deem the Board of Directors to be in control of the concern.

(2) *Affiliation arising under stock options, convertible securities, and agreements to merge*. In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle)

to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(i) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered “agreements in principle” and are thus not given present effect.

(ii) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(iii) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals’, concerns’ or other entities’ ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(3) *Affiliation based on common management.* Affiliation arises where the CEO or President of a concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the board of directors of one concern also controls the board of directors or management of one or more other concerns.

(4) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons (including any individual, concern or other entity) with an identity of interest. An individual, concern or entity may rebut a determination of identity of interest with evidence showing that the interests deemed to be one are in fact separate.

(i) SBA may presume an identity of interest between family members with identical or substantially identical business or economic interests (such as where the family members operate concerns in the same or similar industry in the same geographic area).

(ii) SBA may presume an identity of interest based upon economic dependence if the SBIR/STTR awardee relies upon another concern or entity for 70% or more of its receipts.

(iii) An SBIR or STTR awardee is not affiliated with a portfolio company of a venture capital operating company, hedge fund, or private equity firm, solely on the basis of one or more shared investors, though affiliation may be found for other reasons.

(5) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former or current officers, directors, principal stockholders, managing members, gen-

eral partners, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern’s officers, directors, principal stockholders, managing members, general partners, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A “key employee” is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. A concern will be considered “new” for the purpose of this rule if it has been actively operating continuously for less than one year.

(6) *Affiliation based on joint ventures.* Concerns submitting an application as a joint venture are affiliated with each other with regard to the application. SBA will apply the joint venture affiliation exception at § 121.103(h)(3)(iii) for two firms approved to be a mentor and protégé under SBA’s 8(a) program.

(7) *Affiliation based on the ostensible subcontractor rule.* A concern and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor or subgrantee that performs primary and vital requirements of a funding agreement (*i.e.*, those requirements associated with the principal purpose of the funding agreement), or a subcontractor or subgrantee upon which the concern is unusually reliant. All aspects of the relationship between the concern and subcontractor are considered, including, but not limited to, the terms of the proposal (such as management, technical responsibilities, and the percentage of subcontracted work) and agreements between the concern and subcontractor or subgrantee (such as bonding assistance or the teaming agreement). To determine whether a subcontractor performs primary and vital requirements of a funding agreement, SBA will consider whether the concern’s proposal complies with the performance requirements of the SBIR or STTR program.

(8) *Affiliation based on license agreements.* SBA will consider whether there is a license agreement concerning a product or trademark which is critical to operation of the licensee. The license agreement will not cause the licensor to be affiliated with the licensee if the licensee has the right to profit from its efforts and bears the risk of loss. Affiliation may arise, however, through other means, such as common ownership or common management.

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(9) *Exception to affiliation for portfolio companies.* If a venture capital operating company, hedge fund, or private equity firm that is determined to be affiliated with an awardee is a minority investor in the awardee, the awardee is not affiliated with a portfolio company of the venture capital operating company, hedge fund, or private equity firm, unless:

(i) The venture capital operating company, hedge fund, or private equity firm owns a majority of the portfolio company; or

(ii) The venture capital operating company, hedge fund, or private equity firm holds a majority of the seats of the board of directors of the portfolio company.

(10) *Totality of the circumstances.* In determining whether affiliation exists, SBA may consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(d) *Calculating ownership and control.* SBA will review the small business' equity ownership on a fully diluted basis for purposes of determining ownership, control and affiliation in the SBIR and STTR programs. This means that SBA will consider the total number of shares or equity that would be outstanding if all possible sources of conversion were exercised, including, but not limited to: Outstanding common stock or equity, outstanding preferred stock (on a converted to common basis) or equity, outstanding warrants (on an as exercised and converted to common basis), outstanding options and options reserved for future grants, and any other convertible securities on an as converted to common basis.

## § 121.703 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions based upon a specific funding agreement, and are binding upon the parties. Other SBA opinions provided to funding agreement officers or others, are only advisory, and are not binding or appealable.

## § 121.704 When does SBA determine the size status of a business concern?

The size status of a concern for the purpose of a funding agreement under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards or on the date of the request for a size determination, if an award is pending.

[69 FR 29206, May 21, 2004]

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EFFECTIVE DATE NOTE: At 77 FR 76226, Dec. 27, 2012, § 121.704 was revised, effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

## § 121.704 When does SBA determine the size and eligibility status of a business concern?

(a) The size and eligibility status of a concern for the purpose of a funding agreement award under the SBIR and STTR programs is determined at the time of award for both Phase I and Phase II SBIR and STTR awards, or on the date of the request for a size determination, if an award is pending.

(b) A concern that qualified as a small business at the time it receives an SBIR or STTR funding agreement is considered a small business throughout the life of that specific funding agreement. Where a concern grows to be other than small, the funding agreement agency may exercise the options on the award that is a contract, grant or cooperative agreement or issue a continuation on a grant or cooperative agreement and still count the award as an award to a small business under the SBIR or STTR program. However, the following exceptions apply:

(1) In the case of a merger or acquisition, the awardee must, within 30 days of the transaction becoming final (or the approved funding agreement novation if a novation is required), recertify its small business size status to the funding agreement agency or inform the funding agreement agency that it is other than small. If the awardee is other than small, the agency can no longer fund the options or issue a continuation pursuant to the funding agreement, from that point forward, with SBIR or STTR funds. Funding agreement novations for reasons other than a merger or acquisition do not necessarily require re-certification. The funding agreement agency and the awardee must immediately revise all applicable Federal contract and grant databases to reflect the new size status from that point forward.

(2) For the purposes of SBIR and STTR funding agreements with durations of more than five years, a funding agreement officer must request that a business concern recertify its small business size status no more than 120 days prior to the end of the fifth year of the funding agreement, and no more than 120 days prior to exercising any option or issuing any continuation. If the awardee certifies that it is other than small, the funding agreement agency can no longer fund the options or issue a continuation pursuant to the funding agreement with SBIR or STTR funds. The funding agreement agency and the awardee must immediately revise all applicable Federal contract and grant databases to reflect the new size status from that point forward.

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(c) Re-certification does not change the terms and conditions of the funding agreement. The requirements in effect at the time of award remain in effect throughout the life of the funding agreement.

(d) A request for a size re-certification shall include the size standard in effect at the time of re-certification.

### **§ 121.705 Must a business concern self-certify its size status?**

(a) A firm must self-certify that it currently meets the eligibility requirements set forth in §121.702 of this title or will meet those eligibility requirements on the date of award of a funding agreement for a Phase I or Phase II SBIR award.

(b) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest by other offerors or other credible information which would cause the funding agreement officer or SBA to question the size of the concern.

(c) Procedures for protesting an offeror's self-certification are set forth in §§ 121.1001 through 121.1009.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

EFFECTIVE DATE NOTE: At 77 FR 76227, Dec. 27, 2012, §121.705 was revised, effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

### **§ 121.705 Must a business concern self-certify its size and eligibility status?**

(a) A business concern must self-certify that it meets the eligibility requirements set forth in §121.702 for a Phase I or Phase II SBIR or STTR funding agreement.

(b) A business concern that is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms and a joint venture where one or more parties to the joint venture is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms must be registered with SBA as of the date it submits its initial proposal (or other formal response) to a Phase I or Phase II SBIR announcement or solicitation. The concern must indicate in any SBIR proposal or application that it is registered with SBA as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(c) A small business concern that did not meet the requirements of paragraph (b) of this section at the time of its SBIR proposal or application must notify the funding agree-

ment officer if, on the date of award, the concern is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(1) The concern is still eligible to receive the award if it becomes majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms after the time it submitted its initial proposal (or other formal response) to a Phase I or Phase II SBIR announcement or solicitation if the agency makes the award on or after the date that is 9 months from the end of the period for submitting applications under the SBIR solicitation.

(2) This small business, known as a covered small business concern, would have to certify that it meets the requirements of the SBIR program set forth in §§ 121.702(a)(1)(ii) or 121.702(a)(1)(iii), and 121.702(a)(2) and 121.702(c) at the time of award of the funding agreement.

(d) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest or other credible information which would cause the funding agreement officer or SBA to question the size or eligibility of the concern.

(e) Procedures for protesting an awardee's self-certification are set forth in §§121.1001 through 121.1009. In adjudicating a protest, SBA may address both the size status and eligibility of the SBIR or STTR awardee.

## SIZE ELIGIBILITY REQUIREMENTS FOR PAYING REDUCED PATENT FEES

### **§ 121.801 May patent fees be reduced if a concern is small?**

These sections apply to size status for the purpose of paying reduced patent fees authorized by Pub. L. 97-247, 96 Stat. 317. The eligibility requirements for independent inventors and non-profit organizations for the purpose of paying reduced patent fees are set forth in regulations of the Patent and Trademark Office of the Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

### **§ 121.802 What size standards are applicable to reduced patent fees programs?**

A concern eligible for reduced patent fees is one:

(a) Whose number of employees, including affiliates, does not exceed 500 persons; and

(b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it

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and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this section.

#### **§ 121.803 Are formal size determinations binding on parties?**

Size determinations by authorized SBA officials are formal actions, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties. Other SBA opinions provided to patent applicants or others are only advisory, and are not binding or appealable.

#### **§ 121.804 When does SBA determine the size status of a business concern?**

Size status is determined as of the date of the patent applicant's written verification of size.

#### **§ 121.805 May a business concern self-certify its size status?**

(a) A concern verifies its size status with its submission of its patent application.

(b) Any attempt to establish small size status improperly (fraudulently, through gross negligence, or otherwise) may result in remedial action by the Patent and Trademark Office.

(c) In the absence of credible information indicating otherwise, the Patent and Trademark Office may accept the verification by the concern as a small business as true.

(d) Questions concerning the size verification are resolved initially by the Patent and Trademark Office. If not verified as small, the applicant may request a formal SBA size determination.

#### **SIZE ELIGIBILITY REQUIREMENTS FOR COMPLIANCE WITH PROGRAMS OF OTHER AGENCIES**

#### **§ 121.901 Can other Government agencies obtain SBA size determinations?**

Upon request by another Government agency, SBA will provide a size determination, under SBA rules, standards and procedures, for its use in determining compliance with small business

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requirements of its statutes, regulations or programs.

#### **§ 121.902 What size standards are applicable to programs of other agencies?**

*SBA size standards.* The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless the agency and SBA agree otherwise.

[67 FR 13716, Mar. 26, 2002]

#### **§ 121.903 How may an agency use size standards for its programs that are different than those established by SBA?**

(a) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide the SBA size standard is not suitable for their programs, then agency heads may establish a more appropriate small business definition for the exclusive use in such programs, but only when:

(1) The size standard will determine:

(i) The size of a manufacturing concern by its average number of employees based on the preceding twelve calendar months, determined according to § 121.106;

(ii) The size of a services concern by its average annual receipts over a period of at least three years, determined according to § 121.104;

(iii) The size of other concerns on data over a period of at least three years; or,

(iv) Other factors approved by SBA;

(2) The agency has consulted in writing with SBA's Division Chief, office of Size Standards at least fourteen (14) calendar days before publishing the proposed rule which is part of the rule-making process. The written consultation will include:

(i) What size standard the agency contemplates using;

(ii) To what agency program it will apply;

(iii) How the agency arrived at this particular size standard for this program; and,

(iv) Why SBA's existing size standards do not satisfy the program requirements;

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(3) The agency proposes the size standard for public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553;

(4) The agency provides a copy of the proposed rule, when it publishes it for public comment as part of the rule-making process, to SBA's Division Chief, Office of Size Standards; and

(5) SBA's Administrator approves the size standard before the agency adopts a final rule or otherwise prescribes the size standard for its use. The agency's request for the SBA Administrator's approval must include:

(i) Copies of all comments on the proposed size standard received in response to the proposed rule;

(ii) A separate written justification for the intended size standard;

(iii) A copy of the intended final rule if available at that time, or a copy of the intended final rule and preamble prior to its publication; and

(iv) Other information SBA may request in connection with the request.

(b) When approving any size standard established pursuant to this section, SBA's Administrator will ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.

(c) Where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to section 601(3) of the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

[67 FR 13716, Mar. 26, 2002]

### **§ 121.904 When does SBA determine the size status of a business concern?**

For compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

[67 FR 13716, Mar. 26, 2002]

## PROCEDURES FOR SIZE PROTESTS AND REQUESTS FOR FORMAL SIZE DETERMINATIONS

### **§ 121.1001 Who may initiate a size protest or request a formal size determination?**

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, or any instance in which a procurement or order has been restricted to or reserved for small business or a particular group of small business, the following entities may file a size protest in connection with a particular procurement, sale or order:

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates, or the Director, Office of Government Contracting; and

(iv) Other interested parties. Other interested parties include large businesses where only one concern submitted an offer for the specific procurement in question. A concern found to be other than small in connection with the procurement is not an interested party unless there is only one remaining offeror after the concern is found to be other than small.

(2) For competitive 8(a) contracts, the following entities may protest:

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) The contracting officer; or

(iii) The SBA District Director, or designee, in either the district office serving the geographical area in which the procuring activity is located or the district office that services the apparent successful offeror, or the Associate Administrator for Business Development.

(3) For SBA's Subcontracting Program, the following entities may protest:

(i) The prime contractor;

(ii) The contracting officer;

(iii) Other potential subcontractors;

(iv) The responsible SBA Government Contracting Area Director or the Director, Office of Government Contracting; and

(v) Other interested parties.

(4) For SBA's Small Business Innovation Research (SBIR) Program, the following entities may protest:

(i) A prospective offeror;

(ii) The funding agreement officer;

(iii) The responsible SBA Government Contracting Area Director or the Division Chief, Office of Technology; and

(iv) Other interested parties.

(5) For the Department of Defense's Small Disadvantaged Business (SDB) Program, and any other similar program of another Federal agency, the following entities may file a protest in connection with a particular SDB procurement:

(i) Any offeror for the specific SDB requirement whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) The contracting officer; and

(iii) The responsible SBA Area Director for Government Contracting, the SBA Director, Office of Government Contracting, or the SBA Associate Administrator for Business Development;

(6) For SBA's HUBZone program, the following entities may protest in connection with a particular HUBZone procurement:

(i) Any concern that submits an offer for a specific HUBZone set-aside procurement that the contracting officer has not eliminated for reasons unrelated to size;

(ii) Any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone SBC;

(iii) The contracting officer; and

(iv) The SBA Director, Office of HUBZone, or designee.

(7) For any unrestricted Government procurement in which a business concern has represented itself as a small business concern, the following entities may protest in connection with a particular procurement:

(i) Any offeror;

(ii) The contracting officer; and

(iii) The responsible SBA Government Contracting Area Director, the

Director, Office of Government Contracting, or the Associate Administrator for Business Development.

(8) For SBA's Service Disabled Veteran-Owned Small Business Concern program, the following entities may protest in connection with a particular service-disabled veteran-owned procurement:

(i) Any concern that submits an offer for a specific service-disabled veteran-owned small business set-aside contract;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director; and

(iv) The Director, Office of Government Contracting, or designee.

(9) For SBA's WOSB Federal Contracting Program, the following entities may protest:

(i) Any concern that submits an offer for a specific requirement set aside for WOSBs or WOSBs owned by one or more women who are economically disadvantaged (EDWOSB) pursuant to part 127 of this chapter;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director; and

(iv) The Director for Government Contracting, or designee.

(b) *Request for Size Determinations.* (1) For SBA's Financial Assistance Programs, the following entities may request a formal size determination:

(i) The applicant for assistance; and

(ii) The SBA official with authority to take final action on the assistance requested. That official may also request the appropriate Government Contracting Area Office to determine whether affiliation exists between an applicant for financial assistance and one or more other entities for purposes of determining whether the applicant would exceed the loan limit amount imposed by § 120.151 of this chapter.

(iii) The SBA Associate Administrator for Investment or designee may request a formal size determination for any purpose relating to the SBIC program (*see* part 107 of this chapter) or the NMVC program (*see* part 108 of this chapter). A formal size determination includes a request to determine whether or not affiliation exists between two or more entities for any purpose relating to the SBIC program.

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(2) For SBA's 8(a) BD program:

(i) Concerning initial or continued 8(a) BD eligibility, the following entities may request a formal size determination:

(A) The 8(a) BD applicant concern or Participant; or

(B) The Director of the Division of Program Certification and Eligibility or the Associate Administrator for Business Development.

(ii) Concerning individual sole source 8(a) contract awards, the following entities may request a formal size determination:

(A) The Participant nominated for award of the particular sole source contract;

(B) The SBA program official with authority to execute the 8(a) contract or, where applicable, the procuring activity contracting officer who has been delegated SBA's 8(a) contract execution functions; or

(C) The SBA District Director in the district office that services the Participant, or the Associate Administrator for Business Development.

(3) For SBA's Certificate of Competency Program, the following entities may request a formal size determination:

(i) The offeror who has applied for a COC; and

(ii) The responsible SBA Government Contracting Area Director or the Director, Office of Government Contracting.

(4) For SBA's sale or lease of government property, the following entities may request a formal size determination:

(i) The responsible SBA Government Contracting Area Director or the Director, Office of Government Contracting; and

(ii) Authorized officials of other Federal agencies administering a property sales program.

(5) For eligibility to pay reduced patent fees, the following entities may request a formal size determination:

(i) The applicant for the reduced patent fees; and

(ii) The Patent and Trademark Office.

(6) For purposes of determining compliance with small business requirements of another Government agency

program not otherwise specified in this section, an official with authority to administer the program involved may request a formal size determination.

(7) In connection with initial or continued eligibility for the Small Disadvantaged Business (SDB) program, the following may request a formal size determination:

(i) The applicant or SDB concern; or

(ii) The Director of the Division of Program Certification and Eligibility or the Associate Administrator for Business Development.

(8) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or qualified HUBZone business concern; or

(ii) The Director, Office of HUBZone, or designee.

(9) For purposes of validating that firms listed in the Central Contractor Registration database are small, the Government Contracting Area Director or the Director, Office of Government Contracting may initiate a formal size determination when sufficient information exists that calls into question a firm's small business status. The current date will be used to determine size, and SBA will initiate the process to remove from the database the small business designation of any firm found to be other than small.

(10) The SBA Inspector General may request a formal size determination with respect to any of the programs identified in paragraph (b) of this section.

[61 FR 3286, Jan. 31, 1996, as amended at 63 FR 31907, June 11, 1998; 63 FR 35739, June 30, 1998; 69 FR 25266, May 5, 2004; 69 FR 29206, May 21, 2004; 69 FR 29420, May 24, 2004; 69 FR 44461, July 26, 2004; 73 FR 56947, Oct. 1, 2008; 74 FR 45753, Sept. 4, 2009; 75 FR 62280, Oct. 7, 2010; 76 FR 8253, Feb. 11, 2011]

EFFECTIVE DATE NOTE: At 77 FR 76227, Dec. 27, 2012, §121.1001 was amended by revising paragraph (a)(4), effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

### § 121.1001 Who may initiate a size protest or request a formal size determination?

(a) \* \* \*

(4) For SBA's Small Business Innovation Research (SBIR) program and Small Business Technology Transfer (STTR) program, the following entities may protest:



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- (i) An offeror or applicant for that solicitation;
- (ii) The funding agreement officer; and
- (iii) The responsible SBA Government Contracting Area Director; the Director, Office of Government Contracting; or the Associate Administrator, Investment Division.

\* \* \* \* \*

### § 121.1002 Who makes a formal size determination?

The responsible Government Contracting Area Director or designee makes all formal size determinations in response to either a size protest or a request for a formal size determination, with the exception of size determinations for purposes of the Disaster Loan Program, which will be made by the Disaster Area Office Director or designee responsible for the area in which the disaster occurred.

### § 121.1003 Where should a size protest be filed?

A protest involving a government procurement or sale must be filed with the contracting officer for the procurement or sale, who must forward the protest to the SBA Government Contracting Area Office serving the area in which the headquarters of the protested concern is located, regardless of the location of any parent company or affiliates.

### § 121.1004 What time limits apply to size protests?

(a) *Protests by entities other than contracting officers or SBA*—(1) *Non-negotiated procurement or sale*. A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening.

(2) *Negotiated procurement*. A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified the protestor of the identity of the prospective awardee.

(3) *Long-term contracts*. For contracts with durations greater than five years (including options), including all existing long-term contracts, Multiple Award Schedule (MAS) Contracts, Mul-

multiple Agency Contracts (MACs), and Government-wide Acquisition Contracts (GWACs):

(i) Protests regarding size certifications made for contracts must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice (including notice received in writing, orally, or via electronic posting) of the identity of the prospective awardee or award.

(ii) Protests regarding size certifications made for an option period must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice (including notice received in writing, orally, or via electronic posting) of the size certification made by the protested concern.

(A) A contracting officer is not required to terminate a contract where a concern is found to be other than small pursuant to a size protest concerning a size certification made for an option period.

(B) [Reserved]

(iii) Protests relating to size certifications made in response to a contracting officer's request for size certifications in connection with an individual order must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice (including notice received in writing, orally, or via electronic posting) of the identity of the prospective awardee or award.

(4) *Electronic notification of award*. Where notification of award is made electronically, such as posting on the Internet under Simplified Acquisition Procedures, a protest must be received by the contracting officer before close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after the electronic posting.

(5) *No notice of award*. Where there is no requirement for written pre-award notice or notice of award, or where the contracting officer has failed to provide written notification of award, the 5-day protest period will commence

upon oral notification by the contracting officer or authorized representative or another means (such as public announcements or other oral communications) of the identity of the apparent successful offeror.

(b) *Protests by contracting officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section. Notwithstanding paragraph (e), for purposes of the SBIR program the contracting officer and SBA may file a protest in anticipation of award.

(c) *Effect of contract award.* A timely filed protest applies to the procurement in question even though a contracting officer awarded the contract prior to receipt of the protest.

(d) *Untimely protests.* A protest received after the allotted time limits must still be forwarded to SBA. SBA will dismiss untimely protests.

(e) *Premature protests.* A protest filed by any party, including the contracting officer, before bid opening or notification to offerors of the selection of the apparent successful offer will be dismissed as premature.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004; 71 FR 66444, Nov. 15, 2006]

EFFECTIVE DATE NOTE: At 77 FR 76227, Dec. 27, 2012, §121.1004 was amended by revising paragraph (b), effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

**§ 121.1004 What time limits apply to size protests?**

\* \* \* \* \*

(b) *Protests by contracting officers, funding agreement officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers, funding agreement officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section, including for purposes of the SBIR and STTR programs. Notwithstanding paragraph (e), for purposes of the SBIR and STTR programs the funding agreement officer or SBA may file a protest in anticipation of an award.

\* \* \* \* \*

**§ 121.1005 How must a protest be filed with the contracting officer?**

A protest must be delivered to the contracting officer by hand, telegram, mail, facsimile, Federal Express or other overnight delivery service, e-mail, or telephone. If a protest is made by telephone, the contracting officer must later receive a confirming letter either within the 5-day period in §121.1004(a)(1) or postmarked no later than one day after the date of the telephone protest.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

**§ 121.1006 When will a size protest be referred to an SBA Government Contracting Area Office?**

(a) A contracting officer who receives a protest (other than from SBA) must forward the protest promptly to the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(b) A contracting officer's referral must contain the following information:

- (1) The protest and any accompanying materials;
- (2) A copy of the self-certification as to size;
- (3) Identification of the applicable size standard;
- (4) A copy of the solicitation;
- (5) Identification of the date of bid opening or notification provided to unsuccessful offerors;
- (6) The date on which the protest was received; and
- (7) A complete address and point of contact for the protested concern.

**§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?**

(a) *Particular procurement.* A protest challenging the size of a concern which does not pertain to a particular procurement or sale will not be acted on by SBA.

(b) *A protest must include specific facts.* A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest

merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest. No particular form is prescribed for a protest. Where materials supporting the protest are available, they should be submitted with the protest.

(c) *Non-specific protests will be dismissed.* Protests which do not contain sufficient specificity will be dismissed by SBA. The following are examples of allegation specificity:

*Example 1:* An allegation that concern X is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation is non-specific.

*Example 2:* An allegation that concern X is large because it exceeds the 500 employee size standard (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y is sufficiently specific.

*Example 3:* An allegation that concern X is affiliated with concern Y without setting forth any basis for the allegation is non-specific.

*Example 4:* An allegation that concern X is affiliated with concern Y because Mr. A is the majority shareholder in both concerns is sufficiently specific.

*Example 5:* An allegation that concern X has revenues in excess of \$5 million (where \$5 million is the applicable size standard) without setting forth a basis for the allegation is non-specific.

*Example 6:* An allegation that concern X exceeds the size standard (where the applicable size standard is \$5 million) because it received Government contracts in excess of \$5 million last year is sufficiently specific.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

**§ 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?**

(a) When SBA receives a size protest, the SBA Area Director for Government Contracting, or designee, will notify the contracting officer, the protested concern, and the protestor that the protest has been received. If the protest pertains to a requirement involving SBA's HUBZone program, the Area Director will also notify the D/HUB of the protest. If the protest pertains to a requirement set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Director for Government Contracting of the protest. If the pro-

test pertains to a requirement set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Director for Government Contracting of the protest. If the protest pertains to a requirement involving SBA's SBIR Program, the Area Director will also notify the Division Chief, Office of Technology. If the protest involves the size status of a concern that SBA has certified as a small disadvantaged business (SDB) (see part 124, subpart B of this chapter) the Area Director will notify SBA's Associate Administrator for Business Development. If the protest pertains to a requirement that has been reserved for competition among eligible 8(a) BD program participants, the Area Director will notify the SBA district office servicing the 8(a) concern whose size status has been protested. SBA will provide a copy of the protest to the protested concern together with SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to complete the form and respond to the allegations in the protest.

(b) When SBA receives a request for a formal size determination in accord with § 121.1001(b), SBA will provide a blank copy of SBA Form 355 to the concern whose size is at issue.

(c) The protested concern or concern whose size is at issue must return the completed SBA Form 355 and all other requested information to SBA within 3 working days from the date of receipt of the blank form from SBA. SBA has discretion to grant an extension of time to file the form. The firm must attach to the completed SBA Form 355 its answers to the allegations contained in the protest, where applicable, together with any supporting material.

(d) If a concern whose size status is at issue fails to submit a completed SBA Form 355, responses to the allegations of the protest, or other requested information within the time allowed by SBA, or if it submits incomplete information, SBA may presume that disclosure of the information required by the form or other missing information would demonstrate that the concern is other than a small business. A concern

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whose size status is at issue must furnish information about its alleged affiliates to SBA, despite any third party claims of privacy or confidentiality, because SBA will not disclose information obtained in the course of a size determination except as permitted by Federal law.

[61 FR 3286, Jan. 31, 1996, as amended at 63 FR 31908, June 11, 1998; 69 FR 29207, May 21, 2004; 73 FR 56948, Oct. 1, 2008; 74 FR 45753, Sept. 4, 2009; 75 FR 62280, Oct. 7, 2010]

EFFECTIVE DATE NOTE: At 77 FR 76227, Dec. 27, 2012, §121.1008 was amended by revising paragraph (a), effective Jan. 28, 2013. For the convenience of the user, the revised text is set forth as follows:

### § 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?

(a) When SBA receives a size protest, the SBA Area Director for Government Contracting, or designee, will notify the contracting officer, the protested concern, and the protestor that the protest has been received. If the protest pertains to a requirement involving SBA's HUBZone program, the Area Director will also notify the D/HUB of the protest. If the protest pertains to a requirement set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Director for Government Contracting of the protest. If the protest pertains to a requirement involving SBA's SBIR or STTR programs, the Area Director will also notify the Associate Administrator, Investment Division. If the protest involves the size status of an SDB concern (see part 124, subpart B of this chapter) the Area Director will notify SBA's Associate Administrator for Business Development. If the protest pertains to a requirement that has been reserved for competition among eligible 8(a) BD program participants, the Area Director will notify the SBA district office servicing the 8(a) concern whose size status has been protested. SBA will provide a copy of the protest to the protested concern together with SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to complete the form and respond to the allegations in the protest.

\* \* \* \* \*

### § 121.1009 What are the procedures for making the size determination?

(a) *Time frame for making size determination.* (1) After receipt of a protest or a request for a formal size deter-

mination, the SBA Area Office will issue a formal size determination within 15 business days, if possible.

(2) The contracting officer may award a contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest. Notwithstanding such a determination, the provisions of paragraph (g) of this section apply to the procurement in question.

(3) If SBA does not issue its determination within 15 business days (or request an extension that is granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (g) of this section apply to the procurement in question.

(b) *Basis for determination.* The size determination will be based primarily on the information supplied by the protestor or the entity requesting the size determination and that provided by the concern whose size status is at issue. The determination, however, may also be based on grounds not raised in the protest or request for size determination. SBA may use other information and may make requests for additional information to the protestor, the concern whose size status is at issue and any alleged affiliates, or other parties.

(c) *Burden of persuasion.* The concern whose size is under consideration has the burden of establishing its small business size.

(d) *Weight of evidence.* SBA will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

(e) *Formal size determination.* The SBA will base its formal size determination upon the record, including reasonable inferences from the record, and will

state in writing the basis for its findings and conclusions.

(f) *Notification of determination.* SBA will promptly notify the contracting officer, the protestor, and the protested offeror, as well as each affiliate or alleged affiliate, of the size determination. The notification will be by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt.

(g) *Results of an SBA Size Determination.* (1) A contracting officer may award a contract to a protested concern after the SBA Area Office has determined either that the protested concern is an eligible small business or has dismissed all protests against it. If OHA subsequently overturns the Area Office's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) A contracting officer shall not award a contract to a protested concern that the Area Office has determined is not an eligible small business for the procurement in question.

(i) If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely OHA appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If OHA affirms the size determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency size decision (the formal size determination if no appeal is filed or the appellate decision).

(4) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(5) A concern determined to be other than small under a particular size standard is ineligible for any procure-

ment or any assistance authorized by the Small Business Act or the Small Business Investment Act of 1958 which requires the same or a lower size standard, unless SBA recertifies the concern to be small pursuant to §121.1010 or OHA reverses the adverse size determination. After an adverse size determination, a concern cannot self-certify as small under the same or lower size standard unless it is first recertified as small by SBA. If a concern does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on an application for SBA assistance, the concern must immediately inform the officials responsible for the pending procurement or requested assistance of the adverse size determination.

(h) *Limited reopening of size determinations.* SBA may, in its sole discretion, reopen a formal size determination to correct an error or mistake, provided it is within the appeal period and no appeal has been filed with OHA. Once the agency has issued a final decision (either a formal size determination that is not timely appealed or an appellate decision), SBA cannot re-open the size determination.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 47245, July 18, 2002; 69 FR 29207, May 21, 2004; 76 FR 5683, Feb. 2, 2011]

**§ 121.1010 How does a concern become recertified as a small business?**

(a) A concern may request SBA to recertify it as small at any time by filing an application for recertification with the Government Contracting Area Office responsible for the area in which the headquarters of the applicant is located, regardless of the location of parent companies or affiliates. No particular form is prescribed for the application; however, the request for recertification must be accompanied by a current completed SBA Form 355 and any other information sufficient to show a significant change in its ownership, management, or other factors bearing on its status as a small concern.

(b) Recertification will not be required nor will the prohibition against

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future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible manufacturer where the eligible small business bidder or offeror is a nonmanufacturer on a particular Government procurement.

(c) A denial of an application for recertification is a formal size determination and may be reviewed by OHA at the discretion of that office.

(d) The granting of an application for recertification has future effect only. While it is a formal size determination, notice of recertification is required to be given only to the applicant.

### APPEALS OF SIZE DETERMINATIONS AND NAICS CODE DESIGNATIONS

#### § 121.1101 Are formal size determinations subject to appeal?

(a) Appeals from formal size determinations may be made to OHA. Unless an appeal is made to OHA, the size determination made by a SBA Government Contracting Area Office or Disaster Area Office is the final decision of the agency. The procedures for appealing a formal size determination to OHA are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

(b) OHA will review all timely appeals of size determinations.

[69 FR 29207, May 21, 2004, as amended at 76 FR 5683, Feb. 2, 2011]

#### § 121.1102 Are NAICS code designations subject to appeal?

A NAICS code designation made by a procuring activity contracting officer may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a NAICS code designation may be sought in a court.

[67 FR 47245, July 18, 2002]

#### § 121.1103 What are the procedures for appealing a NAICS code or size standard designation?

(a) Any interested party adversely affected by a NAICS code designation may appeal the designation to OHA. A NAICS code appeal may include an appeal involving the applicable size standard, such as where more than one size standard corresponds to the selected NAICS code or there is a question as to the size standard in effect at the time the solicitation was issued or amended. The only exception is that, for a sole source contract reserved under SBA's 8(a) Business Development program (*see* part 124 of this chapter), only SBA's Associate Administrator for Business Development may appeal the NAICS code designation.

(b) The contracting officer's determination of the applicable NAICS code is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code or size standard designation must be served and filed within 10 business days after the issuance of the solicitation or amendment affecting the NAICS code or size standard. However, SBA may file a NAICS code appeal at any time before offers are due. OHA will summarily dismiss an untimely NAICS code appeal.

(2)(i) The appeal petition must be in writing and must be sent to the Office of Hearings & Appeals, U.S. Small Business Administration, 409 3rd Street, SW., Suite 5900, Washington, DC 20416.

(ii) There is no required format for a NAICS code appeal, but an appeal must include the following information: the solicitation or contract number; the name, address, and telephone number of the contracting officer; a full and specific statement as to why the NAICS code designation is erroneous, and argument in support thereof; and the name, address and telephone number of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon the contracting officer who assigned the NAICS code to the acquisition and SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 3rd Street, SW., Washington, DC 20416.

(c) *Procedure after a NAICS code appeal is filed and served.*

(1) Upon receipt of the service copy of a NAICS code appeal, the contracting officer shall:

- (i) Stay the solicitation;
- (ii) Advise the public, by amendment to the solicitation or other method, of the existence of the NAICS code appeal and the procedures and deadline for interested parties to file and serve arguments concerning the appeal;
- (iii) Send a copy of (or an electronic link to) the entire solicitation, including amendments, to OHA;
- (iv) File and serve any response to the appeal prior to the close of the record; and
- (v) Inform OHA of any amendments, actions or developments concerning the procurement in question.

(2) Upon receipt of a NAICS code appeal, OHA shall:

- (i) Notify the appellant, the contracting officer, the SBA and any other known party of the date OHA received the appeal and the date the record will close; and
  - (ii) Conduct the appeal in accordance with part 134 of this chapter.
- (3) Any interested party may file and serve its response to the NAICS code appeal.

[69 FR 29207, May 21, 2004; 74 FR 45753, Sept. 4, 2009, as amended at 76 FR 5683, Feb. 2, 2011]

### Subpart B—Other Applicable Provisions

#### WAIVERS OF THE NONMANUFACTURER RULE FOR CLASSES OF PRODUCTS AND INDIVIDUAL CONTRACTS

##### § 121.1201 What is the Nonmanufacturer Rule?

The Nonmanufacturer Rule is set forth in § 121.406(b).

##### § 121.1202 When will a waiver of the Nonmanufacturer Rule be granted for a class of products?

(a) A waiver for a class of products (class waiver) will be granted when there are no small business manufacturers or processors available to participate in the Federal market for that class of products.

(b) *Federal market* means acquisitions by the Federal Government from offerors located in the United States, or such smaller area as SBA designates

if it concludes that the class of products is not supplied on a national basis.

(1) When considering the appropriate market area for a product, SBA presumes that the entire United States is the relevant Federal market, unless it is clearly demonstrated that a class of products cannot be procured on a national basis. This presumption may be particularly difficult to overcome in the case of manufactured products, since such items typically have a market area encompassing the entire United States.

(2) When considering geographic segmentation of a Federal market, SBA will not necessarily use market definitions dependent on airline radius, political, or SBA regional boundaries. Market areas typically follow established transportation routes rather than jurisdictional borders. SBA examines the following factors, among others, in cases where geographic segmentation for a class of products is urged:

- (i) Whether perishability affects the area in which the product can practically be sold;
- (ii) Whether transportation costs are high as a proportion of the total value of the product so as to limit the economic distribution of the product;
- (iii) Whether there are legal barriers to transportation of the item;
- (iv) Whether a fixed, well-delineated boundary exists for the purported market area and whether this boundary has been stable over time; and
- (v) Whether a small business, not currently selling in the defined market area, could potentially enter the market from another area and supply the market at a reasonable price.

(c) *Available to participate* in the context of the Federal market means that contractors exist that have been awarded or have performed a contract to supply a specific class of products to the Federal Government within 24 months from the date of the request for waiver, either directly or through a dealer, or who have submitted an offer on a solicitation for that class of products within that time frame.

(d) *Class of products* is an individual subdivision within an NAICS Industry Number as established by the Office of

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Management and Budget in the NAICS Manual.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

### **§ 121.1203 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?**

An individual waiver for a product in a specific solicitation will be approved when the SBA Director, Office of Government Contracting reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.

### **§ 121.1204 What are the procedures for requesting and granting waivers?**

(a) *Waivers for classes of products.* (1) SBA may, at its own initiative, examine a class of products for possible waiver of the Nonmanufacturer Rule.

(2) Any interested person, business, association, or Federal agency may submit a request for a waiver for a particular class of products. Requests should be addressed or hand-carried to the Director, Office of Government Contracting, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

(3) Requests for a waiver of a class of products need not be in any particular form, but should include a statement of the class of products to be waived, the applicable NAICS code, and detailed information on the efforts made to identify small business manufacturers or processors for the class.

(4) If SBA decides that there are small business manufacturers or processors in the Federal procurement market, it will deny the request for waiver, issue notice of the denial, and provide the names, addresses, and telephone numbers of the sources found. If SBA does not initially confirm the existence of small business manufacturers or processors in the Federal market, it will:

(i) Publish notices in the Commerce Business Daily and the FEDERAL REGISTER seeking information on small business manufacturers or processors, announcing a notice of intent to waive the Nonmanufacturer Rule for that

class of products and affording the public a 15-day comment period; and

(ii) If no small business sources are identified, publish a notice in the FEDERAL REGISTER stating that no small business sources were found and that a waiver of the Nonmanufacturer Rule for that class of products has been granted.

(5) An expedited procedure for issuing a class waiver may be used for emergency situations, but only if the contracting officer provides a determination to the Director, Office of Government Contracting that the procurement is proceeding under the authority of FAR § 6.302-2 (48 CFR 6.302-2) for "unusual and compelling urgency," or provides a determination materially the same as one of unusual and compelling urgency. Under the expedited procedure, if a small business manufacturer or processor is not identified by a PASS search, the SBA will grant the waiver for the class of products and then publish a notice in the FEDERAL REGISTER. The notice will state that a waiver has been granted, and solicit public comment for future procurements.

(6) The decision by the Director, Office of Government Contracting to grant or deny a waiver is the final decision by the Agency.

(7) A waiver of the Nonmanufacturer Rule for classes of products has no specific time limitation. SBA will, however, periodically review existing class waivers to the Nonmanufacturer Rule to determine if small business manufacturers or processors have become available to participate in the Federal market for the waived classes of products and the waiver should be terminated.

(i) Upon SBA's receipt of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver will be terminated by the Director, Office of Government Contracting. This evidence may be discovered by SBA during a periodic review of existing waivers or may be brought to SBA's attention by other sources.

(ii) SBA will announce its intent to terminate a waiver for a class of products through the publication of a notice in the FEDERAL REGISTER, asking



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for comments regarding the proposed termination.

(iii) Unless public comment reveals that no small business manufacturer or processor in fact exists for the class of products in question, SBA will publish a final Notice of Termination in the FEDERAL REGISTER.

(b) *Individual waivers for specific solicitations.* (1) A contracting officer's request for a waiver of the Nonmanufacturer Rule for specific solicitations need not be in any particular form, but must, at a minimum, include:

(i) A definitive statement of the specific item to be waived and justification as to why the specific item is required;

(ii) The solicitation number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that there are no known small business manufacturers or processors for the requested items (the determination must contain a narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item and the results of those efforts, and a statement by the contracting officer that there are no known small business manufacturers for the items and that no small business manufacturer or processor can reasonably be expected to offer the required items); and

(iv) For contracts expected to exceed \$500,000, a copy of the Statement of Work.

(2) Requests should be addressed to the Director, Office of Government Contracting, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

(3) SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the individual waiver request. If SBA's research verifies that no small business manufacturers or processors exist for the item, the Director, Office of Government Contracting will grant an individual, one-time waiver. If a small business manufacturer or processor is found for the product in question, the Associate Administrator will deny the

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request. Either decision represents a final decision by SBA.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

### § 121.1205 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers for the Nonmanufacturer Rule have been granted is maintained in SBA Web site at: [http://www.sba.gov/aboutsba/sbaprograms/gc/programs/gc\\_waivers\\_nonmanufacturer.html](http://www.sba.gov/aboutsba/sbaprograms/gc/programs/gc_waivers_nonmanufacturer.html). A list of such waivers may also be obtained by contacting the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, or the nearest SBA Government Contracting Area Office.

[69 FR 29208, May 21, 2004, as amended at 74 FR 46313, Sept. 9, 2009]

## PART 123—DISASTER LOAN PROGRAM

### Subpart A—Overview

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